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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV04–932–1 IFR]

Olives Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the California Olive Committee (committee) for the 2004 and subsequent fiscal years from $13.89 to $12.18 per ton of assessable olives handled. The committee locally administers the marketing order regulating the handling of olives grown in California. Authorization to assess olive handlers enables the committee to incur expenses that are reasonable and necessary to administer the program. The fiscal year began January 1 and ends December 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: February 10, 2004; comments received by April 9, 2004, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; fax: (202) 720–8938, or e-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http//www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901, fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491, fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California olive handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate be applicable to all assessable olives beginning on January 1, 2004, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the committee for the 2004 and subsequent fiscal years from $13.89 per ton of assessable olives to $12.18 per ton of assessable olives.

The California olive marketing order provides authority for the committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the committee are producers and handlers of California olives. They are familiar with the committee's needs and with the costs for goods and services in their local area, and are, thus, in a position to formulate an appropriate budget and assessment rate. The budget and assessment rate is deliberated and formulated in a public meeting, and the expenditures are deliberated in various public subcommittee meetings prior to the committee meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

Prior to this rule, the committee recommended, and USDA approved, an assessment rate that continued in effect until modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The committee met on December 11, 2003, and unanimously recommended fiscal year 2004 expenditures of $1,269,063 and an assessment rate of $12.18 per ton of olives. In comparison, last year's budgeted expenditures were $1,230,590. The assessment rate of $12.18 is $1.71 lower than the $13.89 rate in place for the 2003 fiscal year.

The committee recommended expenditures for the 2004 fiscal year, including $633,500 for marketing development, $360,563 for administration, and $225,000 for research. The committee also recommended a fiscal year 2004 expenditure of $50,000 for the development of an enhanced flavor standards program.

For the 2003 fiscal year, budgeted expenses for these items were $633,500 for marketing development, $347,090 for administration, and $250,000 for research. There were no budgeted expenditures for the development of flavor standards and flavor-standards inspection training for the 2003 fiscal year.

The California Agricultural Statistics Service (CASS) reported olive receipts for the 2003–04 crop year at 102,703 tons, which compares to 89,006 for the 2002–03 crop year. The increase in the crop size for the 2003–04 crop year, due in large part to the alternate-bearing characteristics of olives, has made it possible for the committee to recommend the $1.71 per ton decrease from the current $13.89 per assessable ton rate to $12.18 per assessable ton. The assessment rate recommended by the committee was derived by considering anticipated expenses, actual olive tonnage received by handlers, and additional pertinent factors.

Income derived from handler assessments, interest, and utilization of reserve funds will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum of approximately one fiscal period's expenses as required by § 932.40 of the marketing order.

The assessable tonnage for the 2004 fiscal year is expected to be less than the receipts of 102,703 tons reported by CASS, because handlers may divert some olives for uses that are exempt from marketing order requirements.

The assessment rate continues in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is in effect for an indefinite period, the committee would continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of committee meetings are available from the committee or USDA. Committee and subcommittee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The committee's 2004 budget and those for subsequent fiscal years would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions to ensure that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,200 producers of olives in the production area and 3 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.601) defines small agricultural producers as those with annual receipts less than $750,000, and small agricultural service firms as those with annual receipts less than $5,000,000.

Based upon information from the committee, the majority of olive producers may be classified as small entities, but not all of the handlers may be classified as small entities.

This rule decreases the assessment rate established for the committee and collected from handlers for the 2004 and subsequent fiscal years from $13.89 per ton to $12.18 per ton of olives. The committee unanimously recommended 2004 fiscal year expenditures of $1,269,063 and an assessment rate of $12.18 per ton. The assessment rate of $12.18 per ton is $1.71 per ton lower than the 2003 rate.

The quantity of olive receipts for the 2003–04 crop year was reported by CASS to be 102,703 tons, but the actual assessable tonnage for the 2003–04 crop year is expected to be lower. This is because handlers are expected to divert some olives to exempt outlets on which assessments are not paid.

The $12.18 per ton assessment rate should be adequate to meet this year's expenses when combined with funds from the authorized reserve and interest income. Funds in the reserve will be kept within the maximum of approximately one fiscal period's expenses as required by § 932.40 of the marketing order.

Expenditures recommended by the committee for the 2004 fiscal year include $633,500 for marketing development, $360,563 for administration, and $225,000 for research. The committee also recommended a fiscal year 2004 expenditure of $50,000 for the development of an enhanced flavor standards program.

Budgeted expenses for these items in the 2003 fiscal year were $633,500 for marketing development, $347,090 for administration, and $250,000 for research. There were no expenditures for the development of flavor standards and flavor-standards training for inspection personnel in the 2003 fiscal year.

Olive receipts totaled 102,703 tons for the 2003–04 crop year compared to the 2002–03 crop year's tonnage of 89,006. The committee has increased fiscal year 2004 expenses, but the increase in olive production makes the lower assessment rate possible.

The research expenditures will fund studies to develop chemical and scientific defenses to counteract a threat from the olive fruit fly in the California production area. Market development expenditures are the same because the committee's marketing program for fiscal year 2004 is similar.

The committee reviewed the budget and assessment rate, and unanimously recommended fiscal year 2004 expenditures of $1,269,063, which reflect decreased research expenditures and increased administrative and flavor-standards expenditures.

While deliberating this budget, the committee considered information from various sources, such as the committee's Executive, Research, and Marketing Subcommittees. Alternate spending levels were discussed by these groups, based upon the relative costs and benefits to the olive industry of various research and marketing projects, the total quantity of assessable olives received by handlers, and other pertinent factors. Such deliberations resulted in the recommended 2004 budget and the assessment rate of $12.18 per ton of assessable olives.

A review of historical industry information and preliminary information pertaining to the upcoming fiscal year indicates that the grower price for the 2003–04 crop year will be a weighted average of $478 per ton for canning size fruit and $254 per ton for limited-use size fruit. The weighted average is calculated by the committee

staff and takes into account the prices per ton offered by each handler for various sizes of the major olive varieties produced.

Approximately 85 percent of a ton of olives are canning sizes and 10 percent are limited-use sizes, leaving the balance as cull fruit. Thus, given the current anticipated grower prices, the average grower price per ton would be $431.70. The estimated assessment revenue is expected to be approximately 2.8 percent of the average grower price. Total grower revenue on 102,703 tons would be $44,336,885.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers and may reduce the burden on producers.

In addition, the committee's meeting was widely publicized throughout the California olive industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the December 11, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The subcommittee meetings, as well, were public all interested parties were encouraged to attend and provide comments. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule imposes no additional reporting or recordkeeping requirements on California olive handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on the decreased assessment rate for 2004 and subsequent fiscal years under the Federal marketing order regulating olives grown in California. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the committee's recommendation and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2004 fiscal year began on January 1, 2004, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable olives handled during applicable the crop year; (2) this action decreases the assessment rate and the committee needs sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) this action was unanimously recommended by the committee at a public meeting attended by handlers, and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 932.230 is revised to read as follows:

§ 932.230 Assessment rate.

Beginning on January 1, 2004, an assessment rate of $12.18 per ton is established for California olives.

Dated: February 3, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–2654 Filed 2–6–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–107–AD; Amendment 39–13451; AD 2004–03–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–111, –211, –212, and –231 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320–111, –211, –212, and –231 series airplanes. This AD requires repetitive inspections for fatigue cracking around the fasteners attaching the pressure panel to the flexible bracket at frame 36, adjacent to the longitudinal beams on the left and right sides of the airplane; and repair as necessary. This AD would also provide an optional terminating action for the repetitive inspections. This action is necessary to detect and correct fatigue cracking around the fasteners attaching the pressure panel to the flexible bracket at the frame 36 adjacent to the longitudinal beams, which could result in reduced structural integrity and possible rapid decompression of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective March 15, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 15, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD)

that is applicable to certain Airbus Model A320–111, –211, –212, and –231 series airplanes was published in the **Federal Register** on November 17, 2003 (68 FR 64830). That action proposed to require repetitive inspections for fatigue cracking around the fasteners attaching the pressure panel to the flexible bracket at frame 36, adjacent to the longitudinal beams on the left and right sides of the airplane; and repair as necessary. That action also provided an optional terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

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

Cost Impact

The FAA estimates that 24 airplanes of U.S. registry will be affected by this AD.

For airplanes without a center fuel tank, it will take approximately 1 work hour per airplane to accomplish the detailed inspection, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the detailed inspection is estimated to be $65 per airplane, per inspection cycle.

For airplanes with a center fuel tank, it will take approximately 2 work hours per airplane to accomplish the rotating probe inspection at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the inspection is estimated to $130 per airplane, per inspection cycle.

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

Should an operator elect to perform the optional terminating action, it will take approximately 12 work hours per airplane to accomplish the cold work modification, at an average labor rate of $65 per work hour. The cost of required parts is $650. Based on these figures, the cost impact of the optional terminating action is estimated to be $1,430 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–03–07 Airbus: Amendment 39–13451. Docket 2001–NM–107–AD.

Applicability: Model A320–111, –211, –212, and –231 series airplanes having manufacturer serial numbers 0002 through 0107 inclusive; certificated in any category; except those airplanes on which Airbus Modification 21202/K1432 has been incorporated in production, or Airbus Service Bulletin A320–53–1029, Revision 01, dated April 29, 2002, has been incorporated in service.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking around the fasteners connecting the pressure panel to the flexible bracket at frame 36, adjacent to the longitudinal beams on the left and right sides of the airplane, which could result in reduced structural integrity and possible rapid decompression of the airplane, accomplish the following:

Inspection and Follow-on Actions

(a) Prior to the accumulation of 30,000 total flight cycles, do a rotating probe inspection on airplanes with a center fuel tank, or a detailed inspection on airplanes without a center fuel tank, to detect cracking around the fasteners that attach the pressure panel to the flexible bracket at frame 36, adjacent to the longitudinal beams on the left and right sides of the airplane, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1030, Revision 01, dated May 21, 2002.

Note 1: 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 by the inspection required by paragraph (a) of this AD, repeat the applicable inspection thereafter at intervals not to exceed 6,000 flight cycles for airplanes without a center fuel tank, and at intervals not to exceed 18,000 flight cycles for airplanes with a center fuel tank.

Corrective Actions

(c) If any crack is detected during any inspection required by paragraph (a) of this AD, before further flight, repair the affected structure by accomplishing all applicable actions in accordance with paragraphs 3.B. through 3.E. of the Accomplishment Instructions of Airbus Service Bulletin A320–53–1030, Revision 01, dated May 21, 2002. Repeat the applicable inspection thereafter at intervals not to exceed 6,000 flight cycles for airplanes without a center fuel tank, and at intervals not to exceed 18,000 flight cycles for airplanes with a center fuel tank. For any area where cracking is repaired, the repair constitutes terminating action for the repetitive inspection of that area.

Note 2: Airbus Service Bulletin A320–53–1030 references Airbus Service Bulletin A320–53–1029, Revision 01, dated April 29, 2002, as an additional source of service information for certain repairs.

(d) If any service bulletin specifies to contact the manufacturer for appropriate action: Before further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate or the Direction Générale de l'Aviation Civile (or its delegated agent).

Optional Terminating Action

(e) Modification of the structure around the fasteners that attach the pressure panel to the flexible bracket at frame 36, adjacent to the longitudinal beams on the left and right sides of the airplane, by accomplishing all applicable actions in accordance with paragraphs 3.A. through 3.E. of the Accomplishment Instructions of Airbus Service Bulletin A320–53–1029, Revision 01, dated April 29, 2002, constitutes terminating action for this AD.

Credit for Actions Done per Previous Issue of Service Bulletins

(f) Accomplishment of the required actions before the effective date of this AD in accordance with Airbus Service Bulletin A320–53–1030, dated January 5, 2000; or Airbus Service Bulletin A320–53–1029, dated January 5, 2000; is considered acceptable for compliance with the applicable requirements of paragraphs (a), (b), and (c) of this AD.

Alternative Methods of Compliance

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

Incorporation by Reference

(h) Unless otherwise specified in this AD, the actions must be done in accordance with Airbus Service Bulletin A320–53–1030, Revision 01, excluding Appendix 01, dated May 21, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 2000–531–155(B), dated December 27, 2000.

Effective Date

(i) This amendment becomes effective on March 15, 2004.

Issued in Renton, Washington, on January 29, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2466 Filed 2–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–183–AD; Amendment 39–13450; AD 2004–03–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319 and A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Airbus Model A320 series airplanes, that currently requires repetitive ultrasonic inspections to detect fatigue cracking in the wing/fuselage joint cruciform fittings, and corrective actions if necessary. This amendment requires repetitive ultrasonic inspections for fatigue cracking in the wing/fuselage joint cruciform fittings at a reduced inspection threshold and repetitive interval. This amendment also adds airplanes to the applicability. The actions specified by this AD are intended to detect and correct fatigue cracks on the wing/fuselage joint cruciform fittings, which could result in reduced structural integrity of the wing/fuselage. This action is intended to address the identified unsafe condition.

DATES: Effective March 15, 2004.

The incorporation by reference of Airbus Service Bulletin A320–57–1051, Revision 04, dated November 27, 2001, as listed in the regulations, is approved by the Director of the Federal Register as of March 15, 2004.

The incorporation by reference of Airbus Service Bulletin A320–57–1051, Revision 01, dated March 21, 1996, as listed in the regulations, was approved previously by the Director of the Federal Register as of April 3, 1998 (63 FR 9934, February 27, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–04–49, amendment 39–10360 (63 FR 9934, February 27, 1998), which is applicable to all Airbus Model A320 series airplanes, was published in the **Federal Register** on December 4, 2003 (68 FR 67814). The action proposed to require repetitive ultrasonic inspections for fatigue cracking in the wing/fuselage joint cruciform fittings at an inspection threshold and repetitive interval reduced from those in the existing AD. The action also proposed to add airplanes to the applicability of the existing AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. The FAA received no comments in response to the proposal or our determination of the cost to the public.

Conclusion

After careful review of the available data, we have determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The actions that are currently required by AD 98–04–49 are applicable to 132 airplanes of U.S. registry and take approximately 2 work hours per airplane to accomplish (not including time for gaining access and closing up), at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $17,160, or $130 per airplane.

This new AD affects approximately 475 airplanes of U.S. registry. The new actions that are required by this AD take approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $61,750, or $130 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include

incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–10360 (63 FR 9934, February 27, 1998), and by adding a new airworthiness directive (AD), amendment 39–13450, to read as follows:

2004–03–06 Airbus: Amendment 39–13450. Docket 2002–NM–183–AD. Supersedes AD 98–04–49, Amendment 39–10360.

Applicability: All Model A319 and A320 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracks on the wing/fuselage joint cruciform fittings, which could result in reduced structural integrity of the wing/fuselage, accomplish the following:

Requirements of AD 98–04–49

Ultrasonic Inspection (Model A320 Series Airplanes)

(a) For Model A320 series airplanes: Prior to the accumulation of 28,000 total landings, or within 60 days after April 3, 1998 (the effective date of AD 98–04–49, amendment 39–10360), whichever occurs later, perform an ultrasonic inspection to detect fatigue cracking in the wing/fuselage joint cruciform fittings, in accordance with Airbus Service Bulletin A320–57–1051, Revision 01, dated March 21, 1996.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 20,000 landings, until paragraph (c) of this AD is accomplished.

(2) If any crack is detected, prior to further flight, repair it in accordance with the service bulletin. Thereafter, repeat the inspection at the times specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

(i) If the crack that was detected and repaired was greater than 2.5 mm: Repeat the inspection prior to the accumulation of 32,000 landings since accomplishment of the repair; and thereafter at intervals not to exceed 32,000 landings.

(ii) If the crack that was detected and repaired was less than or equal to 2.5 mm: Repeat the inspection prior to the accumulation of 28,000 landings since accomplishment of the repair; and thereafter at intervals not to exceed 20,000 landings.

New Requirements of This AD

Ultrasonic Inspection (Model A319 Series Airplanes)

(b) For Model A319 series airplanes: Perform an ultrasonic inspection to detect fatigue cracking in the wing/fuselage joint cruciform fittings, in accordance with Airbus Service Bulletin A320–57–1051, Revision 04, dated November 27, 2001. Do the initial inspection at the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD. Repeat the inspection thereafter at intervals not to exceed the applicable interval specified in paragraph 1.E.(2) of the service bulletin.

(1) Prior to the accumulation of 20,000 total flight cycles or 42,000 total flight hours, whichever is first.

(2) Prior to the accumulation of 28,000 total flight cycles or within 3,500 flight cycles after the effective date of this AD, whichever is first.

Ultrasonic Inspection (Model A320 Series Airplanes)

(c) For Model A320 series airplanes: Perform an ultrasonic inspection to detect fatigue cracking in the wing/fuselage joint cruciform fittings, in accordance with Airbus Service Bulletin A320–57–1051, Revision 04, dated November 27, 2001, at the later of the times specified in paragraphs (c)(1) and (c)(2) of this AD, except as required by paragraph (f) of this AD. Accomplishment of the inspection required by this paragraph terminates the repetitive inspections required by paragraph (a) of this AD. Except as required by paragraph (e) of this AD, repeat the ultrasonic inspection at intervals not to exceed the applicable interval specified in paragraph 1.E.(2) of the service bulletin.

(1) Prior to the accumulation of 20,000 total flight cycles or 42,000 total flight hours, whichever is first.

(2) Prior to the accumulation of 28,000 total flight cycles or within 3,500 flight cycles after the effective date of this AD, whichever is first.

Cracking: Corrective Action and Repeat Inspections

(d) If any crack is found during any inspection required by paragraph (b) or (c) of this AD: Before further flight, do all applicable actions in paragraphs B.(1)(b), C.(1), D., and E. (including removing the fastener, performing a rotative probe inspection to confirm the crack or determine the size of the crack, and accomplishing applicable corrective actions) of the Accomplishment Instructions of Airbus Service Bulletin A320–57–1051, Revision 04, dated November 27, 2001, except as provided by paragraph (e) of this AD.

(e) If any crack is found during any inspection required by this AD, and the service bulletin recommends contacting Airbus for appropriate action: Before further flight, repair and perform repetitive inspections per a method and at a repetitive inspection interval approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

Model A320 Series Airplanes Repaired Previously

(f) For Model A320 series airplanes on which a crack measuring more than 2.5 mm was repaired prior to the effective date of this AD per Airbus Service Bulletin A320–57–1051, Revision 01, dated March 21, 1996: Perform repetitive inspections per a method and at an interval approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

Reporting of Inspection Results Not Required

(g) Where the Accomplishment Instructions of Airbus Service Bulletin A320–57–1051, Revision 04, dated November 27, 2001, describe procedures for reporting inspection results to Airbus, this AD does not require such reporting.

Alternative Methods of Compliance

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

Incorporation by Reference

(i) Unless otherwise provided by this AD, the actions shall be done in accordance with Airbus Service Bulletin A320–57–1051, Revision 01, dated March 21, 1996; and Airbus Service Bulletin A320–57–1051, Revision 04, dated November 27, 2001; as applicable.

(1) The incorporation by reference of Airbus Service Bulletin A320–57–1051,

Revision 04, dated November 27, 2001, is approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Airbus Service Bulletin A320–57–1051, Revision 01, dated March 21, 1996, was approved previously by the Director of the Federal Register as of April 3, 1998 (63 FR 9934, February 27, 1998).

(3) Copies may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 1: The subject of this AD is addressed in French airworthiness directive 2002–340(B), dated June 26, 2002.

Effective Date

(j) This amendment becomes effective on March 15, 2004.

Issued in Renton, Washington, on January 29, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2465 Filed 2–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–320–AD; Amendment 39–13449; AD 2004–03–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Model 777–200 series airplanes. This action requires a surface high frequency eddy current inspection of the web of the aft pressure bulkhead, repetitive inspections, and corrective action, if necessary. This action is necessary to detect and correct cracks or damage to the web of the aft pressure bulkhead, which could enlarge if undetected, leading to rapid decompression of the airplane and consequent possible loss of flight critical systems. This action is intended to address the identified unsafe condition.

DATES: Effective February 24, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 24, 2004.

Comments for inclusion in the Rules Docket must be received on or before April 9, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–320–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-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–320–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, 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; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Oltman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6443; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA received a report that parts of the radial lap splices at the station 2150 aft pressure bulkhead were covered up by a web repair made to the aft pressure bulkhead during production of two Boeing Model 777–200 series airplanes. The radial lap splices at the station 2150 aft pressure bulkhead require repetitive inspections as an Airworthiness Limitation, which is defined as Structural Significant Item (SSI) 53–80–I13 in Section 9 of Boeing Document D622W001, 777 Maintenance Planning Data. However, the web repairs made to the two Model 777–200 series airplanes could interfere with the detection of cracks or damage to the web during the required repetitive inspections. Undetected cracks or damage to the web, if not found and repaired, could result in the cracks enlarging, leading to rapid decompression of the airplane and consequent possible loss of flight critical systems.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–53A0039, dated November 14, 2002, which describes procedures for a surface high frequency eddy current (HFEC) inspection of the web of the aft pressure bulkhead, repetitive inspections, and corrective action, if necessary. The corrective action involves repairing any crack or damage found during any surface HFEC inspection. The surface HFEC inspections required by this AD would replace repetitive inspections of the radial lap splices in the local area of the web repair, required as an Airworthiness Limitation, which is defined as SSI 53–80–I13 in Section 9 of Boeing Document D622W001, 777 Maintenance Planning Data. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD is being issued to detect and correct cracks or damage to the web of the aft pressure bulkhead, which could enlarge if undetected, leading to rapid decompression of the airplane and consequent possible loss of flight critical systems. This AD requires a surface HFEC inspection of the web of the aft pressure bulkhead, repetitive inspections, and corrective action, if necessary. The actions are required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that operators may contact the manufacturer for repair data if cracks or damage is found, this proposed AD would require operators to repair any crack or damage per a method approved by the FAA, or per 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.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately between 2 and 4 work hours (depending on airplane configuration) to accomplish the required actions, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this AD would be between $130 and $260 per airplane (depending on airplane configuration). Manufacturer warranty remedies may be available for labor costs associated with this AD. As a result, the costs attributable to the AD may be less than stated above.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and 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 shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications 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.

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 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 rule that might suggest a need to modify the 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 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 Number 2002–NM–320–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–03–05 Boeing: Amendment 39–13449. Docket 2002–NM–320–AD.

Applicability: Model 777–200 series airplanes, variable numbers WA207 and WB325; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracks or damage to the web of the aft pressure bulkhead, which could enlarge if undetected, leading to rapid decompression of the airplane and consequent possible loss of flight critical systems, accomplish the following:

Initial and Repetitive Inspections

(a) Prior to the accumulation of 30,000 total flight cycles, do a surface high frequency eddy current (HFEC) inspection to find cracks or damage to the web of the station 2150 aft pressure bulkhead from the forward side, per the Accomplishment Instructions of Boeing Alert Service Bulletin 777–53A0039, dated November 14, 2002. Repeat the surface HFEC inspection thereafter at intervals not to exceed 16,000 flight cycles.

Corrective Action

(b) If any crack or damage is found during any surface HFEC inspection required by paragraph (a) of this AD, and the service bulletin specifies to ask Boeing for repair data: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

Alternative Methods of Compliance

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

Incorporation by Reference

(d) Unless otherwise specified by this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 777–53A0039, dated November 14, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal

Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on February 24, 2004.

Issued in Renton, Washington, on January 29, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2464 Filed 2–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–355–AD; Amendment 39–13448; AD 2004–03–04]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. This AD requires repetitive inspections for cracking in the casing of the nose landing gear (NLG), and corrective action if necessary. This action is necessary to find and fix cracking of the NLG casing, which could result in failure of the NLG, and consequent reduced controllability of the airplane during takeoff and landing. This action is intended to address the identified unsafe condition.

DATES: Effective March 15, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 15, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: 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 BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes was published in the **Federal Register** on November 18, 2003 (68 FR 65011). That action proposed to require repetitive inspections for cracking in the casing of the nose landing gear, and corrective action if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

We estimate that 57 airplanes of U.S. registry will be affected by this AD, and that it will take approximately 1 work hour per airplane to accomplish the required actions, at the average labor rate of $65 per work hour. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be $3,705, or $65 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–03–04 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–13448. Docket 2001–NM–355–AD.

Applicability: All Model Jetstream 4101 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To find and fix cracking of the casing of the nose landing gear (NLG), which could result in failure of the NLG, and consequent reduced controllability of the airplane during takeoff and landing, accomplish the following:

Service Bulletin References

(a) The following information pertains to the service bulletin referenced in this AD:

(1) The term ''alert service bulletin'' as used in this AD, means the Accomplishment Instructions of BAE Systems (Operations) Limited Alert Service Bulletin J41–A32–079, Revision 2, dated April 28, 2003.

(2) The alert service bulletin refers to APPH Ltd. Service Bulletin AIR83586–32–18, Revision 1, dated October 2001, as an additional source of service information for the accomplishment of certain actions in

BAE Systems (Operations) Limited Alert Service Bulletin J41–A32–079, Revision 2.

(3) Inspections and corrective actions accomplished before the effective date of this AD per BAE Systems (Operations) Limited Alert Service Bulletin J41–A32–079, Revision 1, dated October 25, 2001, are acceptable for compliance with the corresponding actions required by this AD.

(4) Although the alert service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Inspections

(b) Within 7 days after the effective date of this AD, do a detailed inspection for cracking of the NLG casing, per the alert service bulletin. Then, at the compliance time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable, do a fluorescent dye penetrant inspection for cracking of the NLG casing, per the alert service bulletin.

(1) If no cracking is found during the detailed inspection, within 30 days after accomplishment of the detailed inspection, do the fluorescent dye penetrant inspection.

(2) If any cracking is found during the detailed inspection, before further flight, do the fluorescent dye penetrant inspection.

Note 1: 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.''

Corrective Action

(c) If any cracking is found during any inspection per paragraph (b) of this AD, before further flight, do paragraph (c)(1) or (c)(2) of this AD, as applicable, per the alert service bulletin.

(1) If the cracking is within the limits specified in the alert service bulletin, repair the NLG casing.

(2) If the cracking is outside the limits specified in the alert service bulletin, replace the NLG casing with a new or serviceable NLG casing.

Note 2: Although the alert service bulletin specifies that operators may contact the manufacturer for approval of a ferry flight to a location where the replacement of the NLG casing may be accomplished, this AD requires any ferry flight to be approved by the FAA, as specified in 14 CFR part 39.

Repetitive Inspections

(d) Repeat the inspections in paragraph (b) of this AD, and the corrective action in paragraph (c) of this AD, as applicable, at intervals not to exceed 1,200 landings.

Note 3: There is no terminating action available at this time for the repetitive inspections required by paragraph (d) of this AD.

Parts Installation

(e) As of the effective date of this AD, no person may install an NLG casing on any airplane unless it has been inspected per paragraph (b) of this AD and found to be free of any cracking.

Alternative Methods of Compliance

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

Incorporation by Reference

(g) Unless otherwise specified in this AD, the actions shall be done in accordance with BAE Systems (Operations) Limited Alert Service Bulletin J41–A32–079, Revision 2, dated April 28, 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 British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in British airworthiness directive 004–10–2001.

Effective Date

(h) This amendment becomes effective on March 15, 2004.

Issued in Renton, Washington, on January 29, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2463 Filed 2–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–376–AD; Amendment 39–13456; AD 2004–03–12]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Aerospatiale Model ATR72 series airplanes, that currently requires initial and repetitive inspections to detect fatigue cracking in certain areas of the fuselage, and corrective actions if necessary. For certain airplanes, this amendment requires a new inspection for oversized fastener holes and cracking, and repair if necessary. The actions specified by this AD are intended to prevent fatigue cracking of the fuselage and the passenger and service doors, which could result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective March 15, 2004.

The incorporation by reference of a certain publication, as listed in the regulations, is approved by the Director of the Federal Register as of March 15, 2004.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of April 3, 2000 (65 FR 10381, February 28, 2000).

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tony Jopling, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2190; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–04–13, amendment 39–11596 (65 FR 10381, February 28, 2000), which is applicable to certain Aerospatiale Model ATR72 series airplanes, was published in the **Federal Register** on November 28, 2003 (68 FR 66772). The action proposed to continue to require initial and repetitive inspections to detect fatigue cracking in certain areas of the fuselage, and corrective actions if necessary. For certain airplanes, that action also proposed to require repair of oversized fastener holes.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 39 airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 2000–04–13 are as follows:

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–52–1018 (14 U.S.-registered airplanes), it takes approximately 250 work hours per airplane to accomplish the required actions, at an average labor rate of $65 per work hour. Required parts will cost approximately $9,880 per airplane. Based on these figures, the cost impact of these actions required by this AD on U.S. operators is estimated to be $365,820, or $26,130 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–53–1013, Revision 2 (2 U.S.-registered airplanes), it will take approximately 3 work hours per airplane to accomplish the required actions, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of these actions required by this AD on U.S. operators is estimated to be $390, or $195 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–53–1019, Revision 2 (2 U.S.-registered airplanes), it will take approximately 100 work hours per airplane to accomplish the required actions, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of these actions required by this AD on U.S. operators is estimated to be $13,000, or $6,500 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–52–1028 (2 U.S.-registered airplanes), it will take approximately 5 work hours per airplane to accomplish the required actions, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of these actions required by this AD on U.S. operators is estimated to be $650 or $325 per airplane, per inspection cycle.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–52–1033, and ATR72–52–1029, Revision 1 (2 U.S.-registered airplanes), it will take approximately 145 work hours per airplane to accomplish the required door stop fitting replacement, at an average labor rate of $65 per work hour. Required parts are provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the stop fittings replacement required by this AD on U.S. operators is estimated to be $18,850 or $9,425 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–53–1021, Revision 1 (2 U.S.-registered airplanes) it will take approximately 30 work hours per airplane to accomplish the proposed actions, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of these actions required by this AD on U.S. operators is estimated to be $3,900, or $1,950 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–53–1014, Revision 2 (2 U.S.-registered airplanes), it will take approximately 8 work hours per airplane to accomplish the required actions, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of these actions required by this AD on U.S. operators is estimated to be $1,040, or $520 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–53–1020 (14 U.S.-registered airplanes), it will take approximately 6 work hours per airplane to accomplish the required actions, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of these actions required by this AD on U.S. operators is estimated to be $5,460, or $390 per airplane.

The new actions required by this AD are as follows:

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–52–1018, Revision 1, accomplishment of the new actions, if required, will take approximately 250 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts will cost approximately $9,880 per airplane. Based on these figures, the cost impact of the new actions required by this AD on U.S. operators is estimated to be $26,130 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–11596 (65 FR 10381, February 28, 2000), and by adding a new airworthiness directive (AD), amendment 39–13456, to read as follows:

2004–03–12 Aerospatiale: Amendment 39–13456. Docket 2001–NM–376–AD. Supersedes AD 2000–04–13, Amendment 39–11596.

Applicability: Model ATR72 series airplanes; certificated in any category; listed in the following Avions de Transport Regional Service Bulletins:

- ATR72–52–1018, dated May 18, 1995;
- ATR72–52–1018, Revision 1, dated March 13, 2001;

- ATR72–52–1028, dated July 5, 1993;
- ATR72–52–1029, Revision 1, dated November 16, 1994;
- ATR72–52–1033, dated April 28, 1995;
- ATR72–53–1013, Revision 2, dated March 22, 1993;
- ATR72–53–1014, Revision 2, dated October 15, 1992;
- ATR72–53–1019, Revision 2, dated October 15, 1996;
- ATR72–53–1020, dated October 6, 1992; and
- ATR72–53–1021, Revision 1, dated February 20, 1995.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the fuselage and the passenger and service doors, which could result in reduced structural integrity of the airplane, accomplish the following:

Restatement of Requirements of AD 2000–04–13

Inspections/Corrective Actions

(a) For airplanes on which Aerospatiale Modification 03191 (reference Avions de Transport Regional Service Bulletin ATR72–52–1018) has not been accomplished as of April 3, 2000 (the effective date of AD 2000–04–13, amendment 39–11596); prior to the accumulation of 27,000 total flight cycles, or within 30 days after April 3, 2000: Perform a preliminary inspection of the existing fasteners to determine if the fasteners are out of tolerance in accordance with paragraph 2.C.(1) of the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR72–52–1018, dated May 18, 1995. Depending on the results of the inspection, prior to further flight, accomplish the requirements in paragraphs (a)(1) and (a)(2), or (a)(2) and (a)(3) of this AD, as applicable.

(1) Remove the fasteners and inspect the fastener holes to determine if they are out of tolerance or cracking, in accordance with Part A of the Accomplishment Instructions of the service bulletin. Perform a visual inspection of the holes for correct tolerance, and a high frequency eddy current (HFEC) inspection for cracking, in accordance with the service bulletin.

(i) If any discrepancy is detected, prior to further flight, repair in accordance with Part C of the Accomplishment Instructions of the service bulletin.

(ii) If no discrepancy is detected, prior to further flight, replace the cargo compartment door hinges with new hinges in accordance with Part A of the Accomplishment Instructions of the service bulletin.

(2) Remove the existing fasteners and inspect the fastener holes for correct tolerance in accordance with Part B of the Accomplishment Instructions of the service bulletin.

(i) If any discrepancy is detected, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

(ii) If no discrepancy is detected, prior to further flight, replace the cargo compartment door hinges with new hinges in accordance with Part B of the Accomplishment Instructions of the service bulletin.

(3) Remove the existing fasteners, repair, and replace the cargo compartment door hinges with new hinges in accordance with Part C of the Accomplishment Instructions of the service bulletin.

(b) For airplanes having serial numbers 108 through 210 inclusive: Prior to the accumulation of 36,000 total flight cycles, or within 1 month after April 3, 2000, whichever occurs later, perform a one-time visual inspection to determine if rivets are installed in the key holes located on main frames 25 and 27 of the fuselage, between stringers 14 and 15, in accordance with Avions de Transport Regional Service Bulletin ATR72–53–1013, Revision 3, dated January 22, 1999.

(1) If all rivets are installed, no further action is required by paragraph (b) of this AD.

(2) If any rivet is missing, prior to further flight, perform an eddy current inspection of the affected key holes to detect cracks, in accordance with the service bulletin.

(i) If no crack is detected during the inspection required by paragraph (b)(2) of this AD, prior to further flight, install rivets in all affected key holes, in accordance with the service bulletin. If installation of rivets is not possible, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(ii) If any crack is detected during the inspection required by paragraph (b)(2) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(c) For airplanes having serial numbers 108 through 207 inclusive: Prior to the accumulation of 36,000 total flight cycles, or within 1 month after April 3, 2000, whichever occurs later, perform a one-time visual inspection to determine if rivets are installed in the tooling and key holes located on the standard frames of the fuselage, in accordance with Avions de Transport Regional Service Bulletin ATR72–53–1019, Revision 3, dated January 22, 1999.

(1) If all rivets are installed, no further action is required by paragraph (c) of this AD.

(2) If any rivet is missing, prior to further flight, perform a visual inspection of the affected tooling and key holes to detect cracks, in accordance with the service bulletin.

(i) If no crack is detected during the inspection required by paragraph (c)(2) of this AD, prior to further flight, install new rivets in all affected tooling and key holes, in accordance with the service bulletin.

(ii) If any crack is detected during the inspection required by paragraph (c)(2) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(d) For airplanes on which Aerospatiale Modification 03775 (reference Avions de Transport Regional Service Bulletin ATR72–52–1029, Revision 1, dated November 16, 1994) or Aerospatiale Modification 03776 (reference Avions de Transport Regional Service Bulletin ATR72–52–1033, dated April 28, 1995) has not been accomplished as of April 3, 2000: Prior to the accumulation of 12,000 total flight cycles, or within 1 month after April 3, 2000, whichever occurs later, perform an eddy current inspection to detect cracks in the plug door stop fittings of the forward and aft passenger and service doors, in accordance with Avions de Transport Regional Service Bulletin ATR72–52–1028, dated July 5, 1993.

(1) If no crack is detected, repeat the eddy current inspection required by paragraph (d) of this AD thereafter at intervals not to exceed 6,000 flight cycles.

(2) If any crack is detected, prior to further flight, replace the cracked stop fittings with new, improved fittings, in accordance with Avions de Transport Regional Service Bulletin ATR72–52–1033, dated April 28, 1995; or ATR72–52–1029, Revision 1, dated November 16, 1994; as applicable. Accomplishment of the replacement constitutes terminating action for the repetitive inspection requirements of paragraph (d)(1) of this AD for that fitting.

(e) For airplanes on which Aerospatiale Modification 03775 or Aerospatiale Modification 03776 has not been accomplished as of April 3, 2000: Prior to the accumulation of 18,000 total flight cycles, or within 1 month after April 3, 2000, whichever occurs later, replace the plug door stop fittings of the forward and aft passenger and service doors with new, improved fittings, in accordance with Avions de Transport Regional Service Bulletin ATR72–52–1033, dated April 28, 1995; or ATR72–52–1029, Revision 1, dated November 16, 1994; as applicable. Accomplishment of the replacement constitutes terminating action for the repetitive inspection requirements of paragraph (d)(1) of this AD.

(f) For airplanes on which Aerospatiale Modification 02986 (reference Avions de Transport Regional Service Bulletin ATR72–53–1021, Revision 1, dated February 20, 1995) has not been accomplished as of April 3, 2000: Prior to the accumulation of 18,000 total flight cycles, or within 1 month after April 3, 2000, whichever occurs later, perform a one-time eddy current inspection to detect cracks in the rivet holes of the door surround corners of the forward and aft passenger and service doors, in accordance with Avions de Transport Regional Service Bulletin ATR72–53–1021, Revision 1, dated February 20, 1995.

(1) If no crack is detected during the inspection required by paragraph (f) of this AD, prior to further flight, modify the rivet holes, and replace the door surround corners with modified corners, in accordance with the service bulletin.

(2) If any crack is detected during the inspection required by paragraph (f) of this AD, prior to further flight, repair and modify in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(g) For airplanes on which Aerospatiale Modification 02397 (reference Avions de Transport Regional Service Bulletin ATR72–53–1014, Revision 2, dated October 15, 1992) has not been accomplished as of April 3, 2000: Prior to the accumulation of 12,000

total flight cycles, or within 1 month after April 3, 2000, whichever occurs later, perform a one-time eddy current inspection to detect cracks of the rivet holes located on the left and right sides of external stringer 4 at frames 24 and 28 of the fuselage, in accordance with Avions de Transport Regional Service Bulletin ATR72–53–1014, Revision 2, dated October 15, 1992.

(1) If no crack is detected during the inspection required by paragraph (g) of this AD, prior to further flight, install reinforcement angles on the left and right sides of external stringer 4 at frames 24 and 28 of the fuselage, in accordance with the service bulletin.

(2) If any crack is detected during the inspection required by paragraph (g) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(h) For airplanes on which Aerospatiale Modification 03185 (reference Avions de Transport Regional Service Bulletin ATR72–53–1020, dated October 6, 1992) has not been accomplished as of April 3, 2000: Prior to the accumulation of 12,000 total flight cycles, or within 1 month after April 3, 2000, whichever occurs later, perform a one-time eddy current inspection to detect cracks of the rivet holes located on stringer 11 of frame 26 of the fuselage, in accordance with Avions de Transport Regional Service Bulletin ATR72–53–1020, dated October 6, 1992.

(1) If no crack is detected during the inspection required by paragraph (h) of this AD, prior to further flight, install doublers and stringer clips on the left and right sides on stringer 11 of frame 26 of the fuselage, in accordance with the service bulletin.

(2) If any crack is detected during the inspection required by paragraph (h) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

Note 1: Inspections and repairs accomplished prior to the effective date of this AD in accordance with Avions de Transport Regional Service Bulletins ATR72–53–1013, dated June 10, 1991, or Revision 1, dated June 12, 1992; ATR72–53–1019, dated May 13, 1993, or Revision 1, dated November 11, 1994; ATR72–52–1029, dated July 20, 1994; or ATR72–53–1014, Revision 1, dated June 30, 1992; are considered acceptable for compliance with the applicable actions specified in this AD.

New Requirements of this AD

Inspection/Repair

(i) Prior to the accumulation of 27,000 total flight cycles, or within 30 days after the effective date of this AD, whichever is later; do the actions specified in paragraph (i)(1) or (i)(2) of this AD, as applicable.

(1) For airplanes on which Aerospatiale Modification 3191 and Aerospatiale Modification 3184 have not been accomplished as of the effective date of this AD: No further action is required by paragraph (i) of this AD.

(2) For airplanes on which Aerospatiale Modification 3191 has not been accomplished as of the effective date of this AD, and Aerospatiale Modification 3184 has been accomplished as of the effective date of this AD: Do a detailed inspection of the fastener holes at the hinge fitting of the cargo compartment doors to determine if the holes are oversized, and inspect the outer skin around the fastener holes for cracking, in accordance with the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR72–52–1018, Revision 1, dated March 13, 2001.

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.''

(j) Prior to further flight, repair any discrepancies detected during any inspection required by paragraph (i) of this AD in accordance with the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR72–52–1018, Revision 1, dated March 13, 2001. Where the service bulletin specifies contacting the manufacturer for repair disposition, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

Alternative Methods of Compliance

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

Incorporation by Reference

(l) Unless otherwise specified in this AD, the actions shall be done in accordance with the applicable Avions de Transport Regional Service Bulletins, as listed in Table 1 of this AD:

TABLE 1.—SERVICE BULLETINS

Service bulletin	Revision level	Date
ATR72–52–1018	Original	May 18, 1995.
ATR72–52–1018	Revision 1	March 13, 2001.
ATR72–52–1028	Original	July 5, 1993.
ATR72–52–1029	Revision 1	November 16, 1994.
ATR72–52–1033	Original	April 28, 1995.
ATR72–53–1013	Revision 3	January 22, 1999.
ATR72–53–1014	Revision 2	October 15, 1992.
ATR72–53–1019	Revision 3	January 22, 1999.
ATR72–53–1020	Original	October 6, 1992.
ATR72–53–1021	Revision 1	February 20, 1995.

(1) The incorporation by reference of Avions de Transport Regional Service Bulletin ATR72–52–1018, Revision 1, dated March 13, 2001; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of the Avions de Transport Regional Service Bulletins listed in Table 2 of this AD was approved previously by the Director of the Federal Register as of April 3, 2000 (65 FR 10381, February 28, 2000):

TABLE 2.—PREVIOUSLY APPROVED SERVICE BULLETINS

Service bulletin	Revision level	Date
ATR72–52–1018	Original	May 18, 1995.
ATR72–52–1028	Original	July 5, 1993.
ATR72–52–1029	Revision 1	November 16, 1994.
ATR72–52–1033	Original	April 28, 1995.
ATR72–53–1013	Revision 3	January 22, 1999.
ATR72–53–1014	Revision 2	October 15, 1992.
ATR72–53–1019	Revision 3	January 22, 1999.

TABLE 2.—PREVIOUSLY APPROVED SERVICE BULLETINS—Continued

Service bulletin	Revision level	Date
ATR72–53–1020	Original	October 6, 1992.
ATR72–53–1021	Revision 1	February 20, 1995.

(3) Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 2001–142–056(B), dated April 18, 2001.

Effective Date

(m) This amendment becomes effective on March 15, 2004.

Issued in Renton, Washington, on January 29, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2586 Filed 2–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–366–AD; Amendment 39–13452; AD 2004–03–08]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 31, 31A, 35, 35A (C–21A), 36, and 36A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Learjet Model 31, 31A, 35, 35A (C–21A), 36, and 36A airplanes, that requires modification of the drag angles of the fuselage and engine pylons to gain access to the shear webs of the forward engine beams; repetitive inspections of the shear webs of the forward engine beams for cracks; follow-on actions; and modification/repair of the shear webs of the forward engine beams, as necessary, which terminates the repetitive inspections. This action is necessary to prevent significant structural damage to the engine pylons, possible separation of the engines from the fuselage, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective March 15, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 15, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steven Litke, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4127; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Learjet Model 31, 31A, 35, 35A (C–21A), 36, and 36A airplanes was published in the **Federal Register** on November 13, 2003 (68 FR 64283). That action proposed to require modification of the drag angles of the fuselage and engine pylons to gain access to the shear webs of the forward engine beams; repetitive inspections of the shear webs of the forward engine beams for cracks; follow-on actions; and modification/repair of the shear webs of the forward engine beams, as necessary, which would terminate the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

We have determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 893 airplanes of the affected design in the worldwide fleet. We estimate that 673 airplanes of U.S. registry will be affected by this AD.

It will take between 2 and 3 work hours per airplane to accomplish the required modification, at an average labor rate of $65 per work hour. Required parts will cost approximately $243 per airplane. Based on these figures, the cost impact of the required modification on U.S. operators is estimated to be between $251,029 and $294,774, or between $373 and $438 per airplane.

We estimate that it will take 3 work hours to perform the required inspections, and that the average labor rate is $65 per work hour. Based on this figure, the cost impact of the required inspections on U.S. operators is estimated to be $131,235, or $195 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this AD. As a result, the costs attributable to this AD may be less than stated above.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–03–08 Learjet: Amendment 39–13452. Docket 2001–NM–366–AD.

Applicability: The following airplanes, certificated in any category, as applicable:

TABLE 1.—APPLICABILITY

Model—	As Listed in Bombardier Service Bulletin—
31 and 31A Airplanes	31–51–2, dated February 1, 2001; and 31–51–3, Revision 1, dated August 2, 2001.
35, 35A (C–21A), 36 and 36A Airplanes	35/36–51–3, dated February 1, 2001; and 35/36–51–4, Revision 1, dated August 2, 2001.

Compliance: Required as indicated, unless accomplished previously.

To prevent significant structural damage to the engine pylons, possible separation of the engines from the fuselage, and consequent reduced controllability of the airplane, accomplish the following:

Inspections

(a) At the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD: Do a detailed inspection (using a probe) and a general visual inspection of the shear webs of the forward engine beams (including modification of the drag angles) for cracking in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 31–51–2 (for Model 31 airplanes) or 35/36–51–3 (for Model 35 and 36 airplanes), both dated February 1, 2001; as applicable.

(1) Prior to the accumulation of 3,000 total flight hours; or

(2) Within 1,200 flight hours or 1 year after the effective date of this AD, whichever occurs first.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

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.''

Detailed Probe Inspection Follow-On Actions

(b) Following the detailed probe inspection required by paragraph (a) of this AD, do the follow-on actions specified in paragraphs (b)(1), (b)(2), or (b)(3) of this AD, as applicable, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 31–51–2 or 35/36–51–3, both dated February 1, 2001; as applicable.

(1) If the resistance measured during the inspection is less than 0.110 milliohm: Repeat the inspections required by paragraph (a) of this AD thereafter at intervals not to exceed 1,200 flight hours.

(2) If the resistance measured during the inspection is 0.110 milliohm or more, but less than 0.150 milliohm: Within the next 1,200 flight hours, repair and modify the forward engine beam shear web in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 31–51–3, Revision 1 (for Model 31 airplanes) or 35/36–51–4, Revision 1 (for Model 35 and 36 airplanes), both dated August 2, 2001; as applicable.

(3) If the resistance measured during the inspection is 0.150 milliohm or more: Before further flight, repair and modify the forward engine beam shear web in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 31–51–3, Revision 1, or 35/36–51–4, Revision 1; as applicable.

General Visual Inspection Follow-On Actions

(c) Following the general visual inspection required by paragraph (a) of this AD, do all of the applicable follow-on actions at the times specified in the Accomplishment Instructions of Bombardier Service Bulletin 31–51–2 or 35/36–51–3, both dated February 1, 2001; as applicable; except as specified in paragraph (d) of this AD.

(d) If any crack opening is found that is more than 0.03 inch during the general visual inspection required by paragraph (a) of this AD: Before further flight, do the actions specified in paragraphs 2.C.(16)(a) and 2.C.(16)(b) of Bombardier Service Bulletin 31–51–2 or 35/36–51–3, both dated February 1, 2001; as applicable; repair per a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA; and do the terminating action specified in paragraph (e) of this AD.

Terminating Action

(e) Modification of the shear webs by accomplishing all of the actions specified in the Accomplishment Instructions of Bombardier Service Bulletin 31–51–3, Revision 1, or 35/36–51–4, Revision 1, both dated August 2, 2001; as applicable; terminates the initial inspections required by paragraph (a) and the repetitive inspections required by paragraph (b)(1) of this AD.

Repair Approval

(f) Where any service bulletin identified in this AD specifies that the manufacturer may be contacted for disposition of certain repair conditions, repair per a method approved by the Manager, Wichita ACO, FAA.

Submission of Inspection Results Not Required

(g) Although the service bulletins identified in this AD specify to submit information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

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

Incorporation by Reference

(i) Unless otherwise specified in this AD, the actions shall be done in accordance with Bombardier Service Bulletin 31–51–2, dated February 1, 2001, and Bombardier Service Bulletin 31–51–3, Revision 1, dated August 2, 2001; or Bombardier Service Bulletin 35/36–51–3, dated February 1, 2001, and Bombardier Service Bulletin 35/36–51–4, Revision 1, dated August 2, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on March 15, 2004.

Issued in Renton, Washington, on January 29, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2585 Filed 2–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–278–AD; Amendment 39–13455; AD 2004–03–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200C and –200F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–200C and –200F series airplanes, that requires repetitive inspections to find fatigue cracking in the upper chord of the upper deck floor beams, and repair if necessary. For certain airplanes, this amendment also provides an optional repair/modification, which extends certain repetitive inspection intervals. This action is necessary to find and fix cracking in certain upper deck floor beams. Such cracking could extend and sever floor beams at a floor panel attachment hole location and could result in rapid decompression and consequent loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective March 15, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of March 15, 2004.

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

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6434; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–200C and –200F series airplanes was published in the **Federal Register** on July 24, 2003 (68 FR 43688). That action proposed to require repetitive inspections to find fatigue cracking in the upper chord of the upper deck floor beams, and repair if necessary. For certain airplanes, that action also proposed an optional repair/modification, which would extend certain repetitive inspection intervals.

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 Allow an Additional Adjustment to the Compliance Time

One commenter requests that adjustments to the compliance time in paragraph (c) of the proposed AD should apply not only to the actions described in paragraph (a), but also to those described in paragraph (b).

The FAA concurs. We find that relief of the cabin pressure differential should be applicable to the compliance thresholds and repetitive inspections for the optional action described in paragraph (b) as well as those required by paragraph (a). Paragraph (c) of this final rule has been changed accordingly.

Request To Expand Provisions for Optional Repair/Modification

One commenter suggests that paragraph (b) of the proposed AD be revised to provide that, if the inspection required by paragraph (a) of the proposed AD were done per Part 2 Surface High Frequency Eddy Current (HFEC) Inspection Method of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, then accomplishment of the optional repair or modification specified in paragraph (b)(1) of the proposed AD could be performed. The commenter indicates that repair per paragraph (b)(1) of the proposed AD already requires open-hole HFEC inspection of the floor panel hole and reworking of the hole, until any cracking is removed. It should, therefore, be acceptable to accomplish repair following inspection per Part 2 of the Work Instructions of the service bulletin.

The FAA agrees that repair per paragraph (b)(1) of the proposed AD requires open hole HFEC inspection of the floor panel hole and re-working of the hole, until any cracking is removed. We find, therefore, that following inspection per Part 2 of the Work Instructions of the service bulletin, the repair may be accomplished per paragraph (b)(1). We have revised paragraph (b) of the final rule accordingly.

Request To Clarify Location of Fatigue Cracking

One commenter asks that the Discussion section of the proposed AD be revised to refer to STA 420, rather than STA 340. The commenter also asks that the language in the Discussion section and in the third paragraph of the introduction of the proposed AD be changed from ''* * * could extend and sever floor beams adjacent to the body frame * * *'' to ''* * * could extend and sever floor beams at a floor panel hole location * * *.''

The commenter notes that the Background section of Boeing Alert Service Bulletin 747–53A2439 indicates that fatigue cracking was reported at STA 420 rather than at STA 340. The commenter also notes that the applicable inspections and possible repair or modification is at the upper deck floor beam floor panel attachment holes, which exist throughout the span of the floor beams, not just adjacent to where the floor beam joins the body frame.

The FAA partially concurs with the comment. No change is needed in the Discussion section, since that section is not restated in this final rule. In terms

of the location where the floor beams can sever, the suggested change has been made in the summary section and in the regulatory text of this final rule.

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.

Change to Labor Rate Estimate

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

Cost Impact

There are approximately 78 airplanes of the affected design in the worldwide fleet. The FAA estimates that 21 airplanes of U.S. registry will be affected by this AD, that it will take approximately 30 work hours per airplane to accomplish the required inspections, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $40,950, or $1,950 per airplane, per inspection.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–03–11 Boeing: Amendment 39–13455. Docket 2001–NM–278–AD.

Applicability: Model 747–200C and -200F series airplanes, as listed in Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To find and fix cracking in certain upper deck floor beams, which could extend and sever floor beams at a floor panel attachment hole location and could result in rapid decompression and consequent loss of controllability of the airplane, accomplish the following:

Inspections and Repair

(a) Before the accumulation of 22,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever is later: Do the applicable inspection to find fatigue cracking in the upper chord of the upper deck floor beams as specified in Part 1 (Open-Hole High Frequency Eddy Current (HFEC) Inspection Method) or Part 2 (Surface HFEC Inspection Method) of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001. Do the inspections per the service bulletin.

(1) If any crack is found, before further flight, repair per Part 3 (Repair) of the Work Instructions of the service bulletin; except where the service bulletin specifies to contact Boeing for appropriate action, before further flight, repair according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or according to 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 by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD. Do the applicable inspection of the repaired area per Part 1 of the service bulletin at the applicable time per Part 3 of the service bulletin. Repeat the applicable inspection at the applicable interval per Figure 1 of the service bulletin.

(2) If no crack is found, repeat the applicable inspection per paragraph (a) of this AD within the applicable interval per Figure 1 of the service bulletin. As an option, accomplishment of paragraph (b)(1) or (b)(2) of this AD, before further flight, extends the threshold for the initiation of the repetitive inspections required by this paragraph.

Optional Repair/Modification

(b) For airplanes on which the inspection required by paragraph (a) of this AD is done per Part 1 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001; and on which no cracking is found: Accomplishment of the actions specified in either paragraph (b)(1) or (b)(2) of this AD extends the threshold for the initiation of the repetitive inspections required by paragraph (a)(2) of this AD. For airplanes on which the inspection required by paragraph (a) of this AD is done per Part 2 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001; and on which no cracking is found: Accomplishment of the actions specified in paragraph (b)(1) of this AD extends the threshold for the initiation of the repetitive inspections required by paragraph (a)(2) of this AD.

(1) Do the repair per Part 3 of the service bulletin. At the applicable time specified in Table 1 of Part 3 of the service bulletin, do the inspection of the repaired area per Part 1 of the service bulletin. Repeat the inspection thereafter within the applicable interval per Figure 1 of the service bulletin.

(2) Do the modification of the attachment hole of the floor panel per Figure 5 of the service bulletin. Within 10,000 flight cycles after accomplishment of the modification, do the inspection of the modified area per Part 1 of the service bulletin. Repeat the inspection thereafter within the applicable interval per Figure 1 of the service bulletin.

Adjustments to Compliance Time: Cabin Differential Pressure

(c) For the purposes of calculating the compliance threshold and repetitive intervals for actions described in paragraphs (a) and (b) of this AD: The number of flight cycles

in which cabin differential pressure is at 2.0 pounds per square inch (psi) or less need not be counted when determining the number of flight cycles that have occurred on the airplane, provided that flight cycles with momentary spikes in cabin differential pressure above 2.0 psi are included as full pressure cycles. For this provision to apply, all cabin pressure records must be maintained for each airplane. No fleet-averaging of cabin pressure is allowed.

Alternative Methods of Compliance

(d)(1) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001. 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 Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on March 15, 2004.

Issued in Renton, Washington, on January 29, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2584 Filed 2–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–118–AD; Amendment 39–13463; AD 2004–03–19]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–111, –211, and –231 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A320–111, –211, and –231 series airplanes, that currently requires repetitive inspections for cracking in the transition and pick-up angles in the lower part of the center fuselage area, and corrective action if necessary. That AD also provides for an optional terminating modification for the repetitive inspection requirements. This amendment reduces the compliance time for the inspections for cracking of the same area. The actions specified by this AD are intended to detect and correct fatigue cracking in the transition and pick-up angles of the lower part of the center fuselage, which could result in reduced structural integrity of the wing-fuselage support and fuselage pressure vessel. This action is intended to address the identified unsafe condition.

DATES: Effective March 15, 2004.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of March 15, 2004.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of July 14, 1998 (63 FR 31345, June 9, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–12–18, amendment 39–10573 (63 FR 31345, June 9, 1998), which is applicable to certain Airbus Model A320–111, –211, and –231 series airplanes, was published in the **Federal Register** on November 18, 2003 (68 FR 65008). The action proposed to continue to require repetitive inspections for cracking in the transition and pick-up angles in the lower part of the center fuselage area, and corrective action if necessary. The action also provides for an optional terminating modification for the repetitive inspection requirements. The new action proposed to reduce the compliance time for the inspections for cracking of the same area.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 24 airplanes of U.S. registry that will be affected by this AD. The new requirements of this AD add no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators, as follows:

The inspections that are currently required by AD 98–12–18, and retained in this AD, take about 9 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $14,040, or $585 per airplane, per inspection cycle.

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.

If an operator chooses to do the optional terminating modification rather than continue the repetitive inspections, it will take between 5 and 10 work hours per airplane to accomplish the modification, at an average labor rate of $65 per work hour. Required parts will cost between $1,077 and $1,837 per airplane. Based on these figures, the cost impact of the modification is estimated to be between $1,402 and $2,487 per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States,

or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–10573 (63 FR 31345, June 9, 1998), and by adding a new airworthiness directive (AD), amendment 39–13463, to read as follows:

2004–03–19 Airbus: Amendment 39–13463. Docket 2002–NM–118–AD. Supersedes AD 98–12–18, Amendment 39–10573.

Applicability: Model A320–111, –211, and –231 series airplanes; certificated in any category; as listed in Airbus Service Bulletin A320–53–1027, Revision 03, dated February 12, 2002; or Airbus Service Bulletin A320–53–1028, Revision 01, dated February 12, 2002.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the transition and pick-up angles of the lower part of the center fuselage, which could result in reduced structural integrity of the wing-fuselage support and fuselage pressure vessel, accomplish the following:

Restatement of Requirements of AD 98–12–18

Repetitive Inspections/Corrective Actions/Modification

(a) Prior to the accumulation of 16,000 total landings, or within 6 months after July 14, 1998 (the effective date of AD 98–12–18, amendment 39–10573), whichever occurs later, accomplish paragraphs (a)(1) and (a)(2) of this AD, in accordance with Airbus Service Bulletin A320–53–1028, dated March 1, 1994.

(1) Perform a detailed inspection to detect cracks of the transition angle, in accordance with the service bulletin.

(i) If no crack is detected during the detailed inspection required by paragraph (a)(1) of this AD, accomplish either paragraph (a)(1)(i)(A) or paragraph (a)(1)(i)(B) of this AD.

(A) Repeat the detailed inspection thereafter at intervals not to exceed 12,000 landings. Or

(B) Prior to further flight, modify the center fuselage in accordance with Airbus Service Bulletin A320–53–1027, Revision 2, dated June 8, 1995. Accomplishment of the modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1)(i)(A) of this AD.

(ii) If any crack is detected during the detailed inspection required by paragraph (a)(1) of this AD, prior to further flight, replace the transition angle with a new transition angle, in accordance with Airbus Service Bulletin A320–53–1027, Revision 2, dated June 8, 1995.

(2) Perform a rotating probe inspection to detect cracks of the pick-up angle, in accordance with the service bulletin.

(i) If no crack is detected during the rotating probe inspection required by paragraph (a)(2) of this AD, accomplish either paragraph (a)(2)(i)(A) or (a)(2)(i)(B) of this AD.

(A) Repeat the rotating probe inspection thereafter at intervals not to exceed 12,000 landings. Or

(B) Prior to further flight, modify the center fuselage in accordance with Airbus Service Bulletin A320–53–1027, Revision 2, dated June 8, 1995. Accomplishment of the modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(2)(i)(A) of this AD.

(ii) If any crack is detected and it is less than 1.9 mm in length, prior to further flight, accomplish the applicable corrective actions specified in the service bulletin. For holes that have not been modified in accordance with the service bulletin, repeat the rotating probe inspection thereafter at intervals not to exceed 12,000 landings.

(iii) If any crack is detected and it is 1.9 mm or greater in length, prior to further flight, repair it in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

Note 1: Accomplishment of the replacement/modification in accordance with Airbus Service Bulletin A320–53–1027, dated March 1, 1994; or Revision 1, dated September 5, 1994, prior to the effective date of this AD, is considered acceptable for compliance with the applicable action specified in this AD.

New Requirements of This AD

Detailed and Rotating Probe Inspections

(b) For airplanes on which the modification specified in AD 98–12–18 has not been done: Do the applicable inspections specified in paragraphs (b)(1) and (b)(2) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1028, Revision 01, dated February 12, 2002.

(1) For airplanes on which the inspections required by AD 98–12–18 have been done: Within 12,000 flight cycles after accomplishment of the last inspection required by paragraphs (a)(1)(i)(A) and (a)(2)(i)(A) of this AD, as applicable; do a detailed inspection of the transition angle and a rotating probe inspection of the pick-up angle in the lower part of the center fuselage area for cracking.

(2) For airplanes on which the inspections required by AD 98–12–18 have not been done: At the later of the times specified in paragraph (b)(2)(i) or (b)(2)(ii) of this AD; do a detailed inspection of the transition angle and a rotating probe inspection of the pick-up angle in the lower part of the center fuselage area for cracking.

(i) Before the accumulation of 10,400 total flight cycles, or 24,600 total flight hours, whichever is first.

(ii) Before the accumulation of 16,000 total flight cycles, or within 3,500 flight cycles after the effective date of this AD, whichever is first.

Repetitive Inspections

(c) Repeat the detailed and rotating probe inspections specified in paragraphs (b)(1) and (b)(2) of this AD at intervals not to exceed 10,400 flight cycles or 24,600 flight hours, whichever is first, until the modification specified in paragraph (e) of this AD has been done.

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.''

Corrective Action

(d) If any cracking is found during any inspection required by paragraph (b) or (c) of this AD: Prior to further flight, either repair the cracking per the Accomplishment Instructions of Airbus Service Bulletin A320–53–1028, Revision 01, dated February 12, 2002; or do the modification specified in paragraph (e) of this AD. Where the service bulletin specifies to contact the manufacturer for repair instructions, prior to further flight, repair the cracking in accordance with a method approved by the Manager, International Branch, ANM–116; or the Direction Générale de l'Aviation Civile (or its

delegated agent). If the cracking is repaired, repeat the inspections as required by paragraph (c) of this AD.

Modification

(e) Modification of the transition and pick-up angles in the lower part of the center fuselage in accordance with paragraphs 3.A. through 3.D. of the Accomplishment Instructions of Airbus Service Bulletin A320–53–1027, Revision 03, dated February 12, 2002, ends the repetitive inspections required by this AD.

Alternative Methods of Compliance

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

Incorporation by Reference

(g) Unless otherwise specified in this AD, the actions shall be done in accordance with Airbus Service Bulletin A320–53–1027, Revision 2, dated June 8, 1995; Airbus Service Bulletin A320–53–1027, Revision 03, dated February 12, 2002; Airbus Service Bulletin A320–53–1028, dated March 1, 1994; and Airbus Service Bulletin A320–53–1028, Revision 01, dated February 12, 2002; as applicable.

(1) The incorporation by reference of Airbus Service Bulletin A320–53–1027, Revision 03, dated February 12, 2002; and Airbus Service Bulletin A320–53–1028, Revision 01, dated February 12, 2002; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Airbus Service Bulletin A320–53–1027, Revision 2, dated June 8, 1995; and Airbus Service Bulletin A320–53–1028, dated March 1, 1994; was approved previously by the Director of the Federal Register as of July 14, 1998 (63 FR 31345, June 9, 1998).

(3) Copies may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 2002–183(B), dated April 3, 2002.

Effective Date

(h) This amendment becomes effective on March 15, 2004.

Issued in Renton, Washington, on January 30, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2582 Filed 2–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–170–AD, Amendment 39–13467; AD 2004–03–23]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200 and –300 Series Airplanes Equipped With a Main Deck Cargo Door Installed in Accordance With Supplemental Type Certificate (STC) SA2969SO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737–200 and –300 series airplanes, that currently requires a one-time inspection to detect cracks of the lower frames and reinforcing angles of the main deck cargo door where the door latch fittings attach between certain fuselage stations and water lines, and replacement of any cracked part with a new part having the same part number. This amendment continues to require the existing actions and corrects a reference to an incorrect fuselage station. The actions specified by the AD are intended to detect and correct cracking of the lower portion of the main deck cargo door frames, which could result in sudden depressurization, loss or opening of the main deck cargo door during flight, and loss of control of the airplane.

DATES: Effective February 24, 2004.

The incorporation by reference of a certain publication, as listed in the regulations, was approved previously by the Director of the Federal Register as of May 29, 2001 (66 FR 20380, April 23, 2001).

Comments for inclusion in the Rules Docket must be received on or before April 9, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–170–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003-NM–170-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 Pemco World Air Services, 100 Pemco Drive, Dothan, AL 36303. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Don Buckley, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30337–2748, telephone (770) 703–6086; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: On April 12, 2001, the FAA issued AD 2001–08–07, amendment 39–12184 (66 FR 20380, April 23, 2001), applicable to certain Boeing Model 737–200 and –300 series airplanes, to require a one-time inspection to detect cracks of the lower frames and reinforcing angles of the main deck cargo door where the door latch fittings attach between certain fuselage stations and water lines, and replacement of any cracked part with a new part having the same part number. That action was prompted by reports that, during the inspections required by the existing AD, cracks were found in the reinforcing angles of the main deck cargo door frame. The requirements of that AD are intended to detect and correct cracking of the lower portion of the main deck cargo door frames, which could result in sudden depressurization, loss or opening of the main deck cargo door during flight, and loss of control of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, several commenters point out a typographical error in paragraphs (a) and (b) of the AD. The first sentence of those paragraphs state, ''* * * at the location where the door latch fittings attach between fuselage station (FS) 361.86 and FS 298.12 * * *.'' FS 298.12 is incorrect; the correct FS is 498.12, which is specified in the service bulletin cited in that AD (*i.e.*, Pemco Service Bulletin 737–52–003, Revision 2, dated September 13, 2000, including

Attachment 1, dated August 10, 2000.) Because neither of the two airplanes affected by this action are on the U.S. Register, the public has not acted in reliance on the error. Therefore, public notice and comment are unnecessary, because the public would have no interest in commenting.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD is being issued to detect and correct cracking of the lower portion of the main deck cargo door frames, which could result in sudden depressurization, loss or opening of the main deck cargo door during flight, and loss of control of the airplane. This AD supersedes AD 2001–08–07 to require the existing one-time inspection to detect cracks of the lower frames and reinforcing angles of the main deck cargo door where the door latch fittings attach between the correct fuselage stations and water lines, and replacement of any cracked part with a new part having the same part number. The actions are required to be accomplished in accordance with Pemco Service Bulletin 737–52–0037, Revision 2, dated September 13, 2000, including Attachment 1, dated August 10, 2000, described previously in AD 2001–08–07.

Cost Impact

None of the Model 737–200 and –300 series airplanes equipped with a main deck cargo door installed in accordance with Supplemental Type Certificate SA2969SO affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 500 work hours per airplane to accomplish the required inspection, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $32,500 per airplane.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 128 work hours per airplane to accomplish the replacement, at an average labor rate of $65 per work hour. Required parts will cost approximately $15,521 per airplane. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $23,841 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and 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 shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications 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.

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 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 rule that might suggest a need to modify the 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 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 Number 2003–NM–170–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–12184 (66 FR 20380, April 23, 2001), and by adding a new airworthiness directive (AD), amendment 39–13467 to read as follows:

2004–03–23 Boeing: Amendment 39–13467. Docket 2003–NM–170–AD. Supersedes AD 2001–08–07, Amendment 39–12184.

Applicability: Model 737–200 and –300 series airplanes, equipped with a main deck cargo door installed in accordance with

Supplemental Type Certificate (STC) SA2969SO; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the lower portion of the main deck cargo door frames, which could result in sudden depressurization, loss or opening of the main deck cargo door during flight, and loss of control of the airplane; accomplish the following:

Actions Addressing Door Frames or Reinforcing Angles That Have Been Replaced

(a) For airplanes on which any door frame or reinforcing angle at the location where the door latch fittings attach between fuselage station (FS) 361.86 and FS 498.12 and water line (WL) 202.35 and WL 213.00 has been replaced before the effective date of this AD: Do the actions specified in paragraphs (a)(1) and (a)(2) of this AD per the Accomplishment Instructions of Pemco Service Bulletin 737–52–0037, Revision 2, dated September 13, 2000, including Attachment 1, dated August 10, 2000.

(1) Within 3,000 flight cycles after accomplishment of the replacement, do a high frequency eddy current (HFEC) inspection to detect cracks of the replaced lower frames or replaced reinforcing angles of the main deck cargo door, as applicable.

(i) If no crack is detected, repeat the HFEC inspection thereafter at intervals of 1,300 flight cycles on the replaced part.

(ii) If any crack is detected, before further flight, replace the cracked part with a new part having the same part number per the service bulletin. Within 3,000 flight cycles after accomplishment of the replacement, do the HFEC inspection required by paragraph (a)(1) of this AD.

(2) Before or upon the accumulation of 7,000 total flight cycles on any lower frame or reinforcing angle of the main deck cargo door, replace the lower frame or reinforcing angle, as applicable, with new parts. Within 3,000 flight cycles after accomplishment of the replacement, do the HFEC inspection required by paragraph (a)(1) of this AD.

Actions Addressing Door Frames or Reinforcing Angles That Have Not Been Replaced

(b) For airplanes on which any door frame or reinforcing angle at the location where the door latch fittings attach between FS 361.86 and FS 498.12 and WL 202.35 and WL 213.00 has not been replaced before the effective date of this AD: Within 1,300 flight cycles after accomplishment of the HFEC inspection required by AD 2000–17–51, amendment 39–11877, do the action specified in either paragraph (b)(1) or (b)(2) of this AD, as applicable, per the Accomplishment Instructions of Pemco Service Bulletin 737–52–0037, Revision 2, dated September 13, 2000, including Attachment 1, dated August 10, 2000.

(1) For airplanes that have accumulated less than 7,000 total flight cycles since installation of STC SA2969SO: Do an HFEC inspection to detect cracks of the lower frames and reinforcing angles of the main deck cargo door where the door latch fittings attach between FS 361.86 and FS 498.12 and WL 202.35 and WL 213.00.

(i) If no crack is detected, do the actions specified in paragraphs (b)(1)(i)(A) and (b)(1)(i)(B) of this AD.

(A) Repeat the HFEC inspection thereafter at intervals of 1,300 flight cycles on the airplane, but not to exceed the accumulation of 7,000 total flight cycles on the airplane.

(B) Before the accumulation of 7,000 total flight cycles on the airplane, replace the lower frame and reinforcing angle with new parts per the service bulletin. Within 3,000 flight cycles after accomplishment of the replacement, do the HFEC inspection required by paragraph (a)(1) of this AD.

(ii) If any crack is detected, before further flight, replace the cracked part with a new part having the same part number per the service bulletin. Within 3,000 flight cycles after accomplishment of the replacement, do the HFEC inspection required by paragraph (a)(1) of this AD.

(2) For airplanes that have accumulated 7,000 or more total flight cycles since installation of STC SA2969SO: Replace the lower frames and reinforcing angles with new parts. Within 3,000 flight cycles after accomplishment of the replacement, do the HFEC inspection required by paragraph (a)(1) of this AD.

Alternative Methods of Compliance

(c)(1) In accordance with 14 CFR 39.19, the Manager, Atlanta Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–17–51, amendment 39–11877, are approved as alternative methods of compliance with the initial HFEC inspection required by paragraph (a)(1) of this AD.

Incorporation by Reference

(d) The actions shall be done in accordance with Pemco Service Bulletin 737–52–0037, Revision 2, dated September 13, 2000, including Attachment 1, dated August 10, 2000. This incorporation by reference was approved previously by the Director of the Federal Register as of May 29, 2001 (66 FR 20380, April 23, 2001). Copies may be obtained from Pemco World Air Services, 100 Pemco Drive, Dothan, AL 36303. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on February 24, 2004.

Issued in Renton, Washington, on January 30, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2575 Filed 2–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–303–AD; Amendment 39–13454; AD 2004–03–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600) Series Airplanes; and Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; and Model A310 series airplanes. This AD requires revising the Airplane Flight Manual (AFM) to provide the flight crew with procedures to maintain controllability of the airplane in the event of an in-flight deployment of the thrust reverser. This action is necessary to ensure that the flight crew is advised of the potential hazard associated with an in-flight deployment of the thrust reverser, and the procedures necessary to address it. This action is intended to address the identified unsafe condition.

DATES: Effective March 15, 2004.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; and Model A310 series airplanes; was published in the **Federal Register** on August 9, 2002 (67 FR 51787). That action proposed to require revising the Airplane Flight Manual (AFM) to provide the flight crew with procedures to maintain controllability of the airplane in the event of an in-flight deployment of the thrust reverser.

Comments

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

Request To Clarify What AFM Section Must Be Revised

One commenter requests that the FAA clarify what section of the AFM must be revised. The commenter notes that the ''Explanation of Requirements of Proposed Rule'' section of the Notice of Proposed Rulemaking (NPRM) states, ''the proposed AD would require revising the Limitations and Procedures section of the AFM.'' The commenter notes that the body of the AD does not specify to revise the Limitations section of the AFM.

We agree that the reference in the ''Explanation of Requirements of Proposed Rule'' section of the NPRM is incorrect. That section is not restated in this final rule; thus, no change is necessary in this regard.

Explanation of Change to Final Rule

We recognize that the provisions of the AFM revision required by this AD may already have been incorporated into the AFM of affected airplanes through a general revision of the AFM. Thus, we have added a new Note 1 to this final rule (and reidentified subsequent notes accordingly) to state that, when a ''ENG REV UNLK'' procedure identical to that in paragraph (a) of this AD has been included in the general revisions of the AFM, inserting the general revisions into the AFM is acceptable for compliance with this AD.

Conclusion

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

Changes to 14 CFR Part 39/Effect on the AD

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

Explanation of Change to Cost Impact

After the proposed AD was issued, we reviewed the figures we use to calculate the labor rate to do the required actions. To account for various inflationary costs in the airline industry, we find it appropriate to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

Cost Impact

The FAA estimates that 128 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the proposed AFM revision, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $8,320, or $65 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–03–10 Airbus: Amendment 39–13454. Docket 2001–NM–303–AD.

Applicability: All Model A300 B4–600, A300 B4–600R, and F4–600R (collectively called A300–600) series airplanes; and all Model A310 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is advised of the potential hazard associated with an in-flight deployment of the thrust reverser, and the procedures necessary to address it, accomplish the following:

Revisions to the Airplane Flight Manual

(a) Within 60 days after the effective date of this AD, revise the Procedures Following Failures section of the Airplane Flight Manual (AFM) to include the ''ENG REV UNLK'' procedure contained in this paragraph of this AD. This may be accomplished by inserting a copy of this AD into the AFM.

''For airplanes fitted with ECAM SGU standard W23 or above:

ENG REV UNLK (MOD 10264 or MOD 10908 or 11318)

—THROTTLE	IDLE
—MAX SPEED	300 KT
IF BUFFET OR BANK:	
—FUEL LEVER	OFF
—MAX SPEED	240 KT
—Approach Speed: 1.3 Vs of selected landing configuration plus 10 kt. For airplanes fitted with ECAM SGU standard earlier than W23: ENG REV UNLK	
—THROTTLE	IDLE (memory item)
—MAX SPEED	300 KT (memory item)
IF BUFFET OR BANK:	
—FUEL LEVER	OFF
—MAX SPEED	240 KT
—Approach Speed: 1.3 Vs of selected landing configuration plus 10 kt.''	

Note 1: When an ''ENG REV UNLK'' procedure identical to that in paragraph (a)

of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, International Branch, ANM–116.

Special Flight Permits

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

Note 3: The subject of this AD is addressed in French airworthiness directive 2001–186(B), dated May 16, 2001.

Effective Date

(d) This amendment becomes effective on March 15, 2004.

Issued in Renton, Washington, on January 29, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2572 Filed 2–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 734, 740, and 774

[Docket No. 040202032–4032–01]

RIN 0694–AD03

Licensing Jurisdiction for QRS11 Micromachined Angular Rate Sensors

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends the Export Administration Regulations (EAR) to transfer, coincident with the State Department's written commodity jurisdiction determination of February 9, 2004, licensing jurisdiction for QRS11–00100–100/101 Micromachined Angular Rate Sensors from the Department of State to the Department of Commerce when those sensors are integrated into an instrument system (CSIS) of the type described in ECCN 7A994 or aircraft of the type described in ECCN 9A991 that incorporates a CSIS that has such a sensor integrated, or are exported solely for integration into such a system. This rule also excludes systems or aircraft integrating QRS11–00100–100/101 sensors from eligibility for the *de minimis* provisions of the EAR, and excludes the sensors from license exception eligibility.

DATES: This rule is effective: February 9, 2004.

FOR FURTHER INFORMATION CONTACT: Gene Christiansen, Office of Strategic Trade, Bureau of Industry and Security, U.S. Department of Commerce at (202) 482–2984.

SUPPLEMENTARY INFORMATION:

Background

On January 7, 2004, the Department of State published a rule amending the International Traffic in Arms Regulations (ITAR) to remove from United States Munitions List (USML) jurisdiction certain quartz rate sensors when the sensors are integrated into and included as an integral part of a commercial standby instrument system for use on civil aircraft or exported solely for integration into such commercial standby instrument systems. The State Department will review on a case-by-case basis requests to determine whether a sensor is eligible for removal from the USML under the ITAR regulatory change, and must provide a written determination of commodity jurisdiction in order for the removal to take effect (69 FR 873).

As of February 9, 2004, the State Department has determined that QRS11–00100–100/101 Micromachined Angular Rate Sensors integrated into and included as an integral part of a Commercial Standby Instrument System (CSIS) of the type described in the Export Administration Regulations (EAR) under ECCN 7A994 or an aircraft of the type described in ECCN 9A991 that incorporates a CSIS that has such a sensor integrated, or exported solely for integration into such a system are subject to the licensing jurisdiction of the Department of Commerce. In all other cases, the QRS–11 Micromachined Angular Rate Sensors, including the QRS11–00100–100/101 sensors, are subject to the licensing jurisdiction of the Department of State, Directorate of Defense Trade Controls.

When exported solely for integration into a foreign-made CSIS, the QRS11–00100–100/101 is subject to Regional Stability controls under RS Column 1 in Part 738 of the EAR, requiring a license for export to all destinations except Canada. A CSIS integrating the sensor or an aircraft incorporating such a CSIS are subject to Anti-Terrorism controls under AT Column 1. No license exceptions are available for the QRS11–00100–100/101 sensor or the CSIS integrating the sensor. License Exception AVS is available only for certain aircraft on temporary sojourn, specifically those eligible under § 740.15(a) of the EAR.

There is no de minimis level for foreign-made CSISs that contain QRS11–00100–100/101 Micromachined Angular Rate Sensors, or for foreign-made aircraft that incorporate CSISs that have QRS11–00100–100/101s integrated (*see* § 734.4(a) of the EAR). Both the instruments and the aircraft remain subject to the EAR regardless of their percentage, by value, of U.S. content.

This final rule involves no new curtailment of exports, because any transfer or removal of items from the licensing jurisdiction of the Department of State to the licensing jurisdiction of the Department of Commerce maintains a continuity of controls. Therefore, the provisions regarding the impact of new controls do not apply and contract sanctity also does not apply to this imposition of controls (50 app. U.S.C. Sec. 2405(p)).

Any violation of the International Traffic in Arms Regulations, including any violation of the terms and conditions of any Department of State issued export license, prior to the transfer of jurisdiction pursuant to this final rule, shall constitute a violation of the Arms Export Control Act. Items already exported under State jurisdiction, including pursuant to USML licenses, will remain subject to State jurisdiction until such time as the exporter requests and Commerce issues authorization to replace the State license. Upon notification by Commerce of such authorization, State will revoke any previously issued licenses. Such items exported under the ITAR, including pursuant to USML licenses, but made subject to the EAR by this rule and written determination of the Department of State may, thereafter, be integrated into CSISs or aircraft that incorporate CSISs that have such sensors integrated, or reexported in accordance with the provisions of this rule. Actions pending at the Department of State on February 9, 2004, including pending license applications, must be refiled with the Department of Commerce. In addition, items exported or reexported without a USML license prior to a change in jurisdiction in accordance with this rule must be disclosed to the Department of State pursuant to 22 CFR 127.12 prior to requesting Commerce authorization.

Consistent with the provisions of section 6 of the Export Administration Act, a foreign policy report was submitted to Congress on February 3, 2004, notifying the Congress of the change in licensing jurisdiction reflected in this rule.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001 (66 FR 44025, 3 CFR, 2001 Comp., p. 783), as extended by the Notice of August 7, 2003 (68 FR 47833, August 11, 2003), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6883, Washington, DC 20230.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring prior notice, the opportunity for public comment, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that prior notice and an opportunity for public comment be given for this final rule. Because prior notice and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Hillary Hess, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 734

Administrative practice and procedure, Exports, Foreign trade.

15 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Foreign trade.

■ Accordingly, parts 734, 740, and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 734—[AMENDED]

■ 1. The authority citation for 15 CFR part 734 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of October 29, 2003, 68 FR 62209, October 31, 2003; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

■ 2. Section 734.3, paragraph (a)(3) is revised to read as follows:

§ 734.3 Items subject to the EAR.

(a) * * *

(3) U.S. origin parts, components, materials or other commodities integrated abroad into foreign-made products, U.S. origin software commingled with foreign software, and U.S. origin technology commingled with foreign technology:

(i) In any quantity, as described in section 734.4(a) of this part; or

(ii) In quantities exceeding de minimis levels as described in section 734.4(c) and Supplement No. 2 of this part;

* * * * *

■ 3. Section 734.4 is amended by:

■ (a) Revising paragraph (a), as set forth below;

■ (b) Removing and reserving paragraph (b); and

■ (c) Revising the introductory text for paragraph (c), to read as follows:

§ 734.4 De minimis U.S. content.

(a) *Items for which there is no de minimis level.* (1) There is no de minimis level for the export from a foreign country of a foreign-made computer exceeding 190,000 MTOPS containing U.S.-origin controlled semiconductors (other than memory circuits) classified under ECCN 3A001 to Computer Tier 3; or exceeding 28,000 MTOPS containing U.S.-origin controlled semiconductors (other than memory circuits) classified under ECCN 3A001 or high speed interconnect devices (ECCN 4A994.j) to Computer Tier 4 countries described in § 742.12 of the EAR.

(2) There is no de minimis level for foreign-made items that incorporate U.S.-origin items controlled for ''EI'' reasons under ECCN 5A002, 5D002 or 5E002 on the Commerce Control List (Supplement No. 1 to part 774 the EAR). However, exporters may, as part of an encryption review request, ask that software controlled for EI reasons under ECCN 5D002 and eligible for export under the ''retail'' or ''source code'' provisions of license exception ENC, and parts and components controlled under ECCN 5A002, be made eligible for de minimis treatment. The review of de minimis eligibility will take U.S. national security interests into account. Other encryption items controlled for NS or AT reasons under ECCNs 5D002, 5A992, 5D992, and 5E992 are not eligible for de minimis treatment, unless exporters have complied with the applicable notification or review requirements described in § 740.13(e), § 742.15(b)(1), and § 742.15(b)(2) of the EAR. Encryption items controlled by ECCN 5A992, 5D992, or 5E992 and described in § 742.15(b)(3) of the EAR are not subject to these notification or review requirements.

(3) There is no de minimis level for foreign-made:

(i) Commercial Standby Instrument Systems (CSIS) of the type described in ECCN 7A994 on the Commerce Control List (Supplement No. 1 to part 774 the EAR) when the CSISs integrate QRS11–00100–100/101 Micromachined Angular Rate Sensors; and

(ii) Aircraft of the type described in ECCN 9A991 when such aircraft incorporate a CSIS integrating a QRS11–00100–100/101 sensor.

Note to paragraph (a)(3): QRS11 Micromachined Angular Rate Sensors are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of

Defense Trade Controls, except when the QRS11–00100–100/101 version of the sensor is integrated into and included as an integral part of a CSIS of the type described in ECCN 7A994 or aircraft of the type described in ECCN 9A991 that incorporates a CSIS that has such a sensor integrated, or is exported solely for integration into such a system.

(b) [Reserved]

(c) Except as provided in paragraph (a) of this section for certain computers, items controlled for EI reasons, and certain aircraft and instrument systems, the following reexports are not subject to the EAR when made to a terrorist-supporting country listed in Country Group E:1 (*see* Supplement No. 1 to part 740 of the EAR):

* * * * *

PART 740—[AMENDED]

■ 4. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

■ 5. Section 740.2 is amended by adding paragraph (a)(9) to read as follows:

§ 740.2 Restrictions on all License Exceptions.

* * * * *

(9) The item is a QRS11–00100–100/101 Micromachined Angular Rate Sensor controlled for RS reasons under ECCN 7A994.

* * * * *

SUPPLEMENT NO. 1 TO PART 774—[AMENDED]

■ 6. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

■ 7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, ECCN 7A994 is amended by revising the License Requirements section, and the ''Related Controls'' paragraph in the List of Items Controlled section, to read as follows:

7A994 Other navigation direction finding equipment, airborne communication equipment, all aircraft inertial navigation systems not controlled under 7A003 or 7A103, and other avionic equipment, including parts and components, n.e.s.

License Requirements

Reason for Control: RS, AT

Control(s)	Country chart
RS applies to QRS11–00100–100/101 Micro-machined Angular Rate Sensors when exported solely for integration into a CSIS controlled in this entry.	RS Column 1
AT applies to entire entry.	AT Column 1

License Requirement Notes: There is no de minimis level for foreign-made Commercial Standby Instrument Systems (CSIS) that integrate QRS11–00100–100/101 Micromachined Angular Rate Sensors (*see* § 734.4(a) of the EAR).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: QRS11 Micromachined Angular Rate Sensors are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls, unless the QRS11–00100–100/101 is integrated into and included as an integral part of a CSIS of the type described in ECCN 7A994 or aircraft of the type described in ECCN 9A991 that incorporates a CSIS that has such a sensor integrated, or is exported solely for integration into such a system (*See* 22 CFR Part 121). In the latter case, such items are subject to the licensing jurisdiction of the Department of Commerce. Technology specific to the development and production of QRS11 sensors remains subject to the licensing jurisdiction of the Department of State.

Related Definitions: * * *

Items: * * *

■ 8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, ECCN 7E994 is amended by revising the License Requirements section, and the ''Related Controls'' paragraph in the List of Items Controlled section, to read as follows:

7E994 ''Technology'', n.e.s., for the ''development'', ''production'', or ''use'' of navigation, airborne communication, and other avionics equipment.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: Technology specific to the development and production of QRS11 sensors remains subject to the licensing jurisdiction of the Department of State (see ECCN 7A994, Related Controls).

Related Definitions: * * *

Items: * * *

■ 9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, ECCN 9A991 is amended by adding a ''License Requirements Note'' to the License Requirements section, and revising the ''Related Controls'' paragraph in the List of Items Controlled section, to read as follows:

9A991 ''Aircraft'', n.e.s., and gas turbine engines not controlled by 9A001 or 9A101 and parts and components, n.e.s.

License Requirements

Reason for Control: AT, UN

Control(s)	Country chart
AT applies to entire entry.	AT Column 1.
UN applies to 9A991.a.	Rwanda.

License Requirement Notes: There is no *de minimis* level for foreign-made aircraft described by this entry that incorporate Commercial Standby Instrument Systems (CSIS) that integrate QRS11–00100–100/101 Micromachined Angular Rate Sensors (*see* § 734.4(a) of the EAR).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: QRS11 Micromachined Angular Rate Sensors are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls, unless the QRS11–00100–100/101 is integrated into and included as an integral part of a CSIS of the type described in ECCN 7A994 or aircraft of the type described in ECCN 9A991 that incorporates a CSIS that has such a sensor integrated, or is exported solely for integration into such a system (*See* 22 CFR part 121). In the latter case, such items are subject to the licensing jurisdiction of the Department of Commerce. Technology specific to the development and production of QRS11 sensors remains subject to the licensing jurisdiction of the Department of State.

Related Definitions: * * *

Items: * * *

Dated: February 3, 2004.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 04–2655 Filed 2–6–04; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9113]

RIN 1545–BD02

Electronic Filing of Duplicate Forms 5472

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations providing that a Form 5472 that is timely filed electronically is treated as satisfying the requirement timely to file a duplicate Form 5472 with the Internal Revenue Service Center in Philadelphia, Pennsylvania. This action is necessary to clarify how the duplicate filing requirements for Form 5472 apply when a reporting corporation electronically files its income tax return (including any attachments such as Form 5472). This document affects corporations subject to the reporting requirements in sections 6038A and 6038C that file Form 5472 electronically. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the proposed rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective February 9, 2004.

Applicability Date: For the dates of applicability, *see* §§ 1.6038A–2(h) and 1.6038A–2T(h).

FOR FURTHER INFORMATION CONTACT: Edward R. Barret, (202) 435–5265 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 6038A of the Internal Revenue Code (Code) requires information reporting by 25-percent foreign-owned domestic corporations with respect to certain transactions between such domestic corporations and foreign or domestic related parties. Section 6038C of the Code requires foreign corporations engaged in a trade or business within the United States at any time during a taxable year to report the information described in section 6038A with respect to certain transactions between such foreign corporations and foreign related parties. On June 19, 1991, the Treasury Department and the IRS published in the **Federal Register** (56 FR 28056) final regulations (TD 8353, 1991–2 CB 402) under section 6038A. A correction to TD 8353 was published in the **Federal Register** on August 23, 1991, at 56 FR 41792.

The 1991 final regulations under section 6038A contain guidance at §§ 1.6038A–1 and 1.6038A–2 regarding the information reporting requirements under sections 6038A and 6038C. Section 1.6038A–2(a)(1) generally requires a reporting corporation to file a separate annual information return on Form 5472 with respect to each related party with which the reporting corporation has had a reportable transaction during the taxable year. Section 1.6038A–1(c)(1) defines a reporting corporation as either a domestic corporation that is 25-percent foreign-owned or a foreign corporation engaged in a trade or business within the United States at any time during a taxable year. Section 1.6038A–2(d) provides that Form 5472 shall be filed with the reporting corporation's income tax return for the taxable year by the due date of that return. A duplicate Form 5472 shall be filed at the same time with the Internal Revenue Service Center in Philadelphia, Pennsylvania (the Philadelphia Service Center). Section 1.6038A–2(e) provides that even if the reporting corporation's income tax return is not timely filed, Form 5472 (with a duplicate to the Philadelphia Service Center) nonetheless is required to be timely filed at the service center where the return is due, with a copy of Form 5472 to be attached to the income tax return when ultimately filed. However, neither § 1.6038A–2(d) nor § 1.6038A–2(e) directly addresses the duplicate filing requirements for Form 5472 when a reporting corporation electronically files its income tax return (including any attachments such as Form 5472).

Explanation of Provisions

To clarify how the duplicate filing requirements for Form 5472 apply when a reporting corporation electronically files its income tax return (including any attachments such as Form 5472), the temporary regulations amend § 1.6038A–2(d) to provide that a Form 5472 that is timely filed electronically is treated as satisfying the requirement timely to file a duplicate Form 5472 with the Philadelphia Service Center. Accordingly, the filing of a copy of such timely filed electronic Form 5472 with the Philadelphia Service Center will not be required.

The temporary regulations do not amend the requirement of § 1.6038A–2(e) that Form 5472 be timely filed (with a duplicate to the Philadelphia Service Center) even if the income tax return of the reporting corporation is not timely filed. As a transitional matter, for the filing season for taxable year 2003 returns it is anticipated that electronic filing of Form 5472 will be possible only as an attachment to an electronically filed income tax return; electronic filing of Form 5472 separately rather than as an attachment to an electronically filed income tax return will not be technically possible. Accordingly, if a reporting corporation's income tax return is filed after its due date (including extensions), regardless of whether that return is filed electronically, § 1.6038A–2(e) requires the reporting corporation timely to file Form 5472 on paper (with a copy to the Philadelphia Service Center) at the service center where the income tax return is due. In subsequent filing seasons, it is anticipated that electronic filing technology will allow separate electronic filing of Form 5472. The Treasury Department and the IRS intend that the guidance contained in the amendment to § 1.6038A–2(d) in these temporary regulations would apply to any such separate electronic filing of Form 5472. Accordingly, a Form 5472 that is timely and separately filed electronically would be treated as satisfying the requirement timely to file a duplicate Form 5472 with the Philadelphia Service Center.

Similarly, an electronic attachment of a copy of Form 5472 to an income tax return that is not timely filed satisfies the requirement of the second sentence of § 1.6038A–2(e).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the proposed rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is Edward Barret, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury

Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.6038A–2 is amended by revising paragraph (d) to read as follows:

§ 1.6038A–2 Requirement of return.

* * * * *

(d) [Reserved]. For further guidance, see § 1.6038A–2T(d).

* * * * *

■ **Par. 3.** Section 1.6038A–2T is added to read as follows:

§ 1.6038A–2T Requirement of return (temporary).

(a) through (c) [Reserved]. For further guidance, *see* § 1.6038A–2(a) through (c).

(d) *Time and place for filing returns.* A Form 5472 required under this section shall be filed with the reporting corporation's income tax return for the taxable year by the due date (including extensions) of that return. A duplicate Form 5472 (including any attachments and schedules) shall be filed at the same time with the Internal Revenue Service Center, Philadelphia, PA 19255. A Form 5472 that is timely filed electronically satisfies the duplicate filing requirement.

(e) Through (g) [Reserved]. For further guidance, *see* § 1.6038A–2(e) through (g).

(h) *Effective date.* (1) This section applies for taxable years ending on or after January 1, 2003. For taxable years ending prior to January 1, 2003, *see* § 1.6038A–2(d) in effect prior to January 1, 2003 (*see* 26 CFR part 1 revised as of April 1, 2002).

(2) The applicability of this section expires on or before February 6, 2007.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: January 28, 2004.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 04–2645 Filed 2–6–04; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI83–03; FRL–7617–7]

Approval and Promulgation of State Implementation Plans; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a revision to Michigan's definition of volatile organic compound (VOC). EPA's approval will revise Michigan's State Implementation Plan (SIP) for ozone. The Michigan Department of Environmental Quality (MDEQ) submitted this SIP revision on April 25, 2003. On September 2, 2003, the EPA proposed approval of this SIP revision and published a direct final approval as well. EPA received adverse comments on the proposed rulemaking, and therefore withdrew the direct final rulemaking on October 31, 2003.

DATES: This final rule is effective March 10, 2004.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 886–1767. E-Mail Address: *dagostino.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: The **SUPPLEMENTARY INFORMATION** is organized in the following order:

I. What Action Is EPA Taking Today?
II. What Public Comments Were Received and What Is EPA's Response?
III. Statutory and Executive Order Reviews.

I. What Action Is EPA Taking Today?

EPA is approving a revision to Michigan's definition of VOC. Michigan's revised definition of the term volatile organic compound is ''any compound of carbon or mixture of compounds of carbon that participates in photochemical reactions, excluding the following materials, all of which have been determined by the United States Environmental Protection Agency to have negligible photochemical reactivity: * * *'' The definition goes on to list the exempt compounds. When test methods measure exempt compounds, *i.e.* any of those contained in the list of excluded compounds, Michigan's definition allows for their exclusion providing that two specific criteria are met: (1) The exempt compounds must be accurately quantified and (2) MDNR must approve the exclusion.

EPA's approval of the new definition of VOC will revise Michigan's SIP for ozone.

II. What Public Comments Were Received and What Is EPA's Response?

We received one adverse comment on our proposed approval of Michigan's revised definition of VOC. Below, we have paraphrased the comment and responded to it.

Comment: I assume ozone and VOC standards are being made more lax and for that reason I oppose this proposal. Polluted air from Michigan is transported east and negatively impacts the health of citizens of the eastern United States. Michigan power plants must be required to clean the air.

Response: Ozone and VOC standards are not being made more lax. The definition of VOC currently in Michigan's SIP for ozone was approved in 1992. It met EPA's approval criteria, but had a more complicated structure, with divisions based on vapor pressure. In 1998, Michigan submitted a revised definition of VOC that we believe would have relaxed ozone standards. We proposed to disapprove this revision on June 10, 1999. After we published this proposed disapproval in the **Federal Register**, Michigan withdrew that version of the definition and revised it, modeling its definition after the federal definition at 40 CFR 51.100(s).

Since the 1992 approval, EPA has issued rules listing additional compounds as non-photochemically reactive. Michigan has included these compounds as exempt in the revised definition. This does not relax Michigan's definition of VOC because compounds which are not photochemically reactive, by their nature, do not contribute to the formation of ozone.

EPA recognizes that the transport of ozone and its precursors, particularly oxides of nitrogen (NO_X), is a significant problem that must be addressed if all areas in the country are to attain the national ambient air quality standards for ozone. This is why EPA issued the Ozone Transport Rulemaking on October 27, 1998. In that rule, EPA limits NO_X emissions by assigning states

NO_X budgets. All states affected by the rule, including Michigan, will be meeting their NO_X budgets by controlling emissions from power plants and other large industrial sources.

III. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, ''Regulatory Planning and Review'' (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.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

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).

Regulatory Flexibility Act

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.*).

Unfunded Mandates Reform Act

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 nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

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, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have federalism implications because it will 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, ''Federalism'' (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 Act.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

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 a significant regulatory action under Executive Order 12866.

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a SIP submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

Paperwork Reduction Act

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.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a 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 Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 9, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Oxides of nitrogen, Ozone, Volatile organic compounds.

Dated: January 23, 2004.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart X—Michigan

■ 2. Section 52.1170 is amended by adding paragraph (c)(119) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(119) The Michigan Department of Environmental Quality submitted a revision to Michigan's State Implementation Plan for ozone on April 25, 2003. This submittal contained a revised definition of volatile organic compound.

(i) Incorporation by reference.

(A) R 336.1122 Definitions; V, effective March 13, 2003.

[FR Doc. 04–2621 Filed 2–6–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031126297–3297–01; I.D. 020204B]

Fisheries of the Exclusive Economic Zone off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

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

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment opening directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA) for 12 hours effective 1200 hrs, Alaska local time (A.l.t.), February 4, 2004, until 2400 hrs, A.l.t., February 4, 2004. This adjustment is necessary to allow the fishing industry opportunity to harvest the 2004 interim total allowable catch (TAC) of pollock specified for Statistical Area 630 of the GOA.

DATES: Effective 1200 hrs, A.l.t., February 4, 2004, until 2400 hrs, A.l.t., February 4, 2004. Comments must be received no later than 4:30 p.m., A.l.t., February 24, 2004.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall. Comments also may be sent via facsimile (fax) to 907 586 7557 or email to AKR.eComments@noaa.gov. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS issued a prohibition to directed fishing for pollock effective January 21, 2004, for Statistical Area 630, in accordance with § 679.20(d)(1)(iii), (see 69 FR 2850, January 21, 2004).

As of January 29, 2004, 1,463 metric tons (mt) of pollock remain in the 2004 interim TAC of pollock specified for Statistical Area 630 of the GOA. Regulations at § 679.23(b) specify that the time of all openings and closures of fishing seasons other than the beginning and end of the calendar fishing year is 1200 hrs, A.l.t. Current information shows the catching capacity of vessels catching pollock for processing by the inshore component in Statistical Area 630 of the GOA is about 2,500 mt per day. The Administrator, Alaska Region, NMFS, has determined that the 2004 interim TAC of pollock could be exceeded if a 24–hour fishery were allowed to occur. NMFS intends that the seasonal allowance not be exceeded and, therefore, will not allow a 24–hour directed fishery. NMFS, in accordance with § 679.25(a)(1)(i)and § 679.25(a)(2)(i)(A)(C), is adjusting directed fishery for pollock in Statistical Area 630 of the GOA by opening the fishery at 1200 hrs, A.l.t., February 4, 2004, and closing the fishery at 2400 hrs, A.l.t., February 4, 2004, at which time directed fishing for pollock will be prohibited. This action has the effect of opening the fishery for 12 hours.

NMFS is taking this action to allow a controlled fishery to occur, thereby preventing the overharvest of the 2004 interim TAC of pollock designated in accordance with the interim 2004 harvest specifications for groundfish in the GOA (68 FR 67964, December 5, 2004) and § 679.20(a)(5)(iii). In accordance with § 679.25(a)(2)(iii), NMFS has determined that prohibiting directed fishing at 2400 hrs, A.l.t., February 4, 2004, after a 12 hour opening is the least restrictive management adjustment to achieve the 2004 interim TAC of pollock in Statistical Area 630 of the GOA. Pursuant to § 679.25(b)(2), NMFS has considered data regarding catch per unit of effort and rate of harvest in making this adjustment.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the Agency from responding to the most recent fisheries data in a timely fashion and, thus, prevent the full utilization of the 2004 interim TAC of pollock in statistical area 630 of the GOA.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the 2004 interim TAC of pollock in Statistical Area 630 of the GOA to be harvested in an expedient manner. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until February 19, 2004.

This action is required by §§ 679.20 and 679.25 and is exempt from review under Executive Order 12866.

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

Bruce C. Morehead,

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

[FR Doc. 04–2715 Filed 2–4–04; 2:43 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 26
Monday, February 9, 2004

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AK04

Changes in Health Benefits Enrollment

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations on changes in health benefits enrollment for annuitants or survivor annuitants when a carrier terminates participation in the Federal Employees Health Benefits (FEHB) Program. We are proposing to amend the regulations to give OPM the authority to enroll annuitants in whichever option of the BC/BS Service Benefit Plan it determines will most closely approximate the terminated plan.

DATES: OPM must receive comments on or before April 9, 2004.

ADDRESSES: Send written comments to Abby L. Block, Deputy Associate Director for Employee and Family Support Policy, Strategic Human Resources Policy Division, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415–3666; or deliver to OPM, Room 3400, 1900 E Street, NW., Washington, DC; or FAX to (202) 606–0633.

FOR FURTHER INFORMATION CONTACT: Nataya Battle, (202) 606–1874, or e-mail to *nbattle@opm.gov.*

SUPPLEMENTARY INFORMATION:

Background

Effective August 18, 1997, OPM amended 5 CFR 890.306(l)(4) to authorize OPM to enroll an annuitant in the standard option of the Service Benefit Plan when the annuitants' health plan terminates participation in whole or in part in the FEHB Program and the annuitant fails to elect to change to another participating health plan. At that time, the BC/BS Service Benefit Plan offered the high option and the standard option. The standard option was the lower level of benefits with a lower premium cost. Beginning with the January 1, 2002 contract year, the BC/BS Service Benefit Plan merged the high option coverage into the standard option coverage and added a basic option. The standard option is now the highest level of coverage offered with the more costly premium rate.

In the existing regulation, an annuitant who does not elect to change health plans is deemed to have enrolled in the standard option, or if the plan he or she was enrolled in had two options, he or she is deemed to have enrolled in the same option previously enrolled in (either high or low), if the annuity is sufficient to pay the high option premium. The annuitant may not change to another health plan until the next open season.

The more costly premium rate may not be affordable for many annuitants. Amending this regulation will allow OPM the flexibility to consider the premium rate and the benefits that the annuitant was receiving under his or her terminated health plan, and enroll the annuitant in the option of the BC/BS Service Benefit Plan that most closely approximates the terminated plan. In addition, this amendment will give the annuitant the opportunity to change the option or to change to another health plan of his or her choice within 60 days of the date OPM sent notification that he or she has been deemed enrolled in a particular option of the BC/BS Service Benefit Plan.

Regulatory Flexibility Act

OPM has determined that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect health benefits of certain Federal retirees.

Executive Order 12866, Regulatory Review

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

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or Tribal governments.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is proposing to amend 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), 11246 (b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061.

2. In § 890.306 revise paragraphs (l)(4)(ii), (l)(4)(iv) and (q)(1)(ii) to read as follows:

§ 890.306 When can annuitants or survivor annuitants change enrollment or reenroll and what are the effective dates?

* * * * *

(l) * * *

(4) * * *

(ii) If a plan discontinues all of its existing options, an annuitant who does not change the enrollment is deemed to have enrolled in the option of the Blue Cross and Blue Shield Service Benefit Plan that OPM determines most closely approximates the terminated plan.

* * * * *

(iv) After an involuntary enrollment under paragraph (l)(4)(ii) or (iii) of this section becomes effective, the annuitant may change the enrollment to the other option of the Blue Cross and Blue Shield Service Benefit Plan or to another health plan of his or her choice retroactively within 60 days after OPM advises the annuitant of the new enrollment;

* * * * *

(q) * * *

(1) * * *

(ii) Enroll in any plan in which the annuitant's share of the premium is less

than the amount of annuity. If the annuitant elects to change to a lower cost enrollment, the change takes effect immediately upon loss of coverage under the prior enrollment. The exemptions from debt collection procedures that are provided under § 831.1305(d)(2) and § 845.205(d)(2) of this chapter apply to elections under this paragraph (q)(1)(ii).

* * * * *

[FR Doc. 04–2666 Filed 2–6–04; 8:45 am]

BILLING CODE 6325–50–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[Doc. No. CN–03–003]

Cotton Research and Promotion Program: Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Confirmation of regulations.

SUMMARY: This document summarizes the results of an Agricultural Marketing Service (AMS) review of the Cotton Research and Promotion Program under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA). Based upon its review, AMS has determined that the Cotton Research and Promotion Order should be continued without change.

ADDRESSES: Interested persons may obtain a copy of the review. Requests for copies should be sent to Whitney Rick, Chief, Research and Promotion Staff, USDA, AMS, Cotton Program, 14th and Independence Avenue, SW., Stop 0224, Washington, DC 20250–0224; Fax (202) 690–1718; or e-mail *whitney.rick@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Whitney Rick, Chief, Research and Promotion Staff, USDA, AMS, Cotton Program, 14th and Independence Avenue, SW., Stop 0224, Washington, DC 20250–0224; Fax (202) 690–1718; or e-mail *whitney.rick@usda.gov.*

SUPPLEMENTARY INFORMATION: The Cotton Research and Promotion Act of 1966 (7 U.S.C. 2101 *et seq.*) authorized a national Cotton Research and Promotion Program which is industry operated and funded, with oversight by USDA. The program's objective is to enable cotton growers and importers to establish, finance and carry out a coordinated program of research and promotion to improve the competitive position of, and to expand markets for cotton.

The Program became effective on December 31, 1966, when the Cotton Research and Promotion Order (7 CFR part 1205) was issued. Assessments began with the 1967 cotton crop. The Order was later amended and a supplemental assessment initiated, not to exceed one percent of the value of each bale, effective January 28, 1977. The current assessment is $1 per bale plus five-tenths of one percent of the value of the bales and is collected on every bale of cotton harvested and ginned in the U.S. and on imported raw cotton and on the non-U.S. cotton content of imported textile and apparel products.

AMS published in the **Federal Register** (64 FR 8014) its plan to review certain regulations, including the Cotton Research and Promotion Order, under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612). An updated plan was published in the **Federal Register** on August 14, 2003 (68 FR 48573).

AMS published a notice for review and request for written comments on the Order in the August 26, 2003, issue of the **Federal Register** (68 FR 51202). No comments were received.

The review was undertaken to determine whether the Order should be continued without change, amended, or rescinded (consistent with the objectives of the Act) to minimize the impacts on small entities. In conducting this review, AMS considered the following factors: (1) The continued need for the Order; (2) the nature of complaints or comments received from the public concerning the Order; (3) the complexity of the Order; (4) the extent to which the Order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the Order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the Order.

Currently, there are approximately 21,000 producers, 300 first handlers, and 12,000 importers covered under the Order. AMS provides Federal oversight of the cotton research and promotion program. The Order is not unduly complex, and AMS has not identified regulations that duplicate, overlap, or conflict with the Order. Over the years, regulation changes have been made to address industry operation changes and to improve program administration. The goal of these evaluations is to assure that the Order and the regulations implemented under it fit the needs of the industry and are consistent with the Act. With the exception of challenges concerning the constitutionality of assessments used for generic advertising under the Order, which the Department is currently defending, AMS has not received complaints about the Order.

Based upon the review, AMS has determined that the Order should be continued without change. AMS plans to continue working with the cotton industry in maintaining an effective program.

Dated: February 3, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–2697 Filed 2–6–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–402–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Model 1125 Westwind Astra Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Gulfstream Aerospace LP Model 1125 Westwind Astra series airplanes, that currently requires revising the Airplane Flight Manual (AFM) to provide the flight crew with operational guidance under certain failure conditions and a limitation not to engage the long-range navigation system during takeoff, approach, or landing. This action would require replacing the low-voltage sensing relays with higher-accuracy relays, and replacing the circuit breakers of the directional gyros with circuit breakers with lower amps. After the replacements have been accomplished, this action would also require inserting a new temporary revision (TR) in the Limitations section of the AFM, or removing the revision to the AFM required by the previous AD. The actions specified by the proposed AD are intended to prevent the loss of primary attitude and directional gyros, which relate position information to the flight crew. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 25, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–402–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–402–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D25, Savannah, Georgia 31402. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–402–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–402–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 5, 2000, the FAA issued AD 2000–18–11, amendment 39–11896 (65 FR 55450, September 14, 2000), applicable to certain Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.) Model 1125 Westwind Astra series airplanes, to require revising the Airplane Flight Manual (AFM) to provide the flight crew with operational guidance under certain failure conditions and a limitation not to engage the long-range navigation system during takeoff, approach, or landing. That action was prompted by a report of the failure of a single alternating current inverter, which resulted in the simultaneous in-flight failure of all primary attitude and directional gyros on board. The requirements of that AD are intended to prevent loss of power to the electronic flight information system (EFIS) screens and internal gyros during takeoff, approach, or landing, and consequent loss of primary position information to the flight crew.

Actions Since Issuance of Previous Rule

The preamble to AD 2000–18–11 specified that we considered the requirements ''interim action'' and that the manufacturer may develop a modification to address the unsafe condition. That AD explained that we may consider further rulemaking if a modification is developed, approved, and available. The manufacturer now has developed such a modification, and we have determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

Explanation of Relevant Service Information

We have reviewed and approved Astra (Gulfstream Aerospace Corporation) Alert Service Bulletin 1125–24A–246, dated September 26, 2001, which describes procedures for replacing existing low voltage sensing relays with higher-accuracy relays capable of providing warning at approximately 97.5 volts alternating current (VAC), and for replacing the 3-amp directional gyros circuit breakers with 0.5-amp circuit breakers. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

We have also reviewed and approved Temporary Revision (TR) #13, dated October 31, 2001, which directs operators to remove TR #9 from the Limitations section of the AFM.

Accomplishment of the actions specified in the service bulletin and the TR is intended to adequately address the identified unsafe condition. The Civil Aviation Administration of Israel (CAAI) classified this service bulletin as mandatory and issued Israeli AD 24–01–06–04 to ensure the continued airworthiness of these airplanes in Israel.

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 2000–18–11 to continue to require a revision to the Limitations section of the AFM. This proposed AD would also require replacing the low-voltage sensing relays with higher-accuracy relays; replacing the circuit breakers of the directional gyros with circuit breakers with lower amps; and inserting a new temporary revision in the Limitations Section of the AFM that directs operators to remove the revision to the AFM required by the previous AD, after the proposed replacements have been accomplished. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Difference Between the Proposed AD and the Service Bulletin

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for submitting a certificate of compliance to the manufacturer, this

proposed AD would not require those actions.

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

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD; therefore, paragraphs (b) and (c) and Note 2 of AD 2000–18–11 are not included in this proposed AD. However, this proposed AD identifies the office authorized to approve alternative methods of compliance.

Explanation of Change to Applicability

We have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Cost Impact

There are approximately 29 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 2000–18–11 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $1,885, or $65 per airplane.

The new actions that are proposed in this AD action would take approximately 24 work hours per airplane to accomplish for the proposed replacements, and approximately 1 work hour per airplane to accomplish for the proposed revision of the AFM. The average labor rate is $65 per work hour. Required parts would cost approximately $1,030 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $76,995, or $2,655 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11896 (65 FR 55450, September 14, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.): Docket 2001–NM–402–AD. Supersedes AD 2000–18–11, Amendment 39–11896.

Applicability: Model 1125 Westwind Astra series airplanes, certificated in any category; serial numbers 004 through 029 inclusive, and 031 through 041 inclusive.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of primary attitude and directional gyros, which relate position information to the flight crew, accomplish the following:

Restatement of the Requirements of AD 2000–18–11

AFM Revision

(a) Within 10 days after September 29, 2000 (the effective date of AD 2000–18–11), revise the Limitations and Abnormal Procedures Sections of the Israel Aircraft Industries, Ltd., Astra Airplane Flight Manual (AFM) by inserting a copy of Temporary Revision No. 9, dated May 21, 2000, into the AFM.

Note 1: When the temporary revision required by paragraph (a) of this AD has been incorporated into the general revisions of the AFM, the general revisions may be inserted into the AFM, provided that the information contained in the general revisions is identical to that specified in the temporary revision.

New Requirements of this AD

Replacements

(b) Within 50 flight hours after the effective date of this AD: Replace existing sensing relays with new higher-accuracy relays having new part number (P/N) 1350–X3042; and replace existing DIRECT GYRO 1 and 2 circuit breakers having P/N 7274–47–3 with new circuit breakers having new P/N 7274–47–0.5; in accordance with the Accomplishment Instructions of Astra (Gulfstream Aerospace Corporation) Alert Service Bulletin 1125–24A–246, dated September 26, 2001.

New AFM Revision

(c) Before further flight following the actions required by paragraph (b) of this AD, remove Temporary Revision No. 9, dated May 21, 2000, from the AFM; or revise the Limitations and Abnormal Procedures Sections of the Gulfstream Aerospace LP ASTRA AFM by inserting a copy of Temporary Revision No. 13, dated October 31, 2001, into the AFM.

Note 2: When the temporary revision required by paragraph (c) of this AD has been incorporated into the general revisions of the AFM, the general revisions may be inserted into the AFM, provided that the information contained in the general revisions is identical to that specified in the temporary revision.

No Reporting Requirement

(d) Operators should note that, although the Accomplishment Instructions of the service bulletin referenced in paragraph (b) of this AD describe procedures for submitting a certificate of compliance to the manufacturer, this AD does not require those actions.

Alternative Methods of Compliance

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

Note 3: The subject of this AD is addressed in Israeli airworthiness directive 24–01–06–04, dated November 13, 2001.

Issued in Renton, Washington, on February 3, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2679 Filed 2–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–182–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757–200 and –300 series airplanes. This proposal would require inspection of the guide arm assembly on passenger door number 1 for a part mark to determine whether the guide arm assembly contains an adjuster rod which was incorrectly manufactured and replacement of any such adjuster rod. This action is necessary to prevent failure of the adjuster rod in the passenger door guide arm assembly, which could prevent the door from opening or closing during normal or emergency operations, resulting in inability to evacuate the crew and passengers in an emergency. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 25, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–182–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–182–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplanes, 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: David Crotty, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6422; 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 2001–NM–182–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–182–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports that certain adjuster rods in passenger door guide arm assemblies of the number 1 left passenger doors on certain Boeing Model 757–200 and 757–300 series airplanes were improperly manufactured, resulting in adjuster rods which are not as strong as correctly manufactured adjuster rods. This condition, if not corrected, could result in failure of the adjuster rod in the passenger door guide arm assembly, which could prevent the door from opening or closing during normal or emergency operations, resulting in inability to evacuate the crew and passengers in an emergency.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Special Attention Service Bulletin 757–52–0077, dated February 15, 2001, (for Boeing Model 757–200 series airplanes) and Boeing Special Attention Service Bulletin 757–52–0078, dated February 15, 2001 (for Boeing Model 757–300 series airplanes). The service bulletins describe procedures for inspecting the guide arm assembly of the passenger door for a part mark and replacing the improperly manufactured adjuster rods in the guide arm assembly with new adjustor rods. The service bulletins also describe procedures for testing the hardness of an adjuster rod when there is no part mark on the guide arm assembly. Accomplishment of the actions specified in the service bulletins 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 these same type designs, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

There are approximately 9 airplanes of the affected design in the worldwide fleet. The FAA estimates that 9 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour

per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $585, or $65 per airplane.

The FAA estimates that it would take approximately 2 work hours per airplane to accomplish the proposed replacement. Required parts would cost approximately $478 per airplane. Based on that figure, the cost impact of the proposed replacement on U.S. operators is estimated to be a maximum of $5,472, or $608 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this 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.

The manufacturer would cover the cost of replacement parts and of labor associated with this proposed AD, subject to warranty conditions. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2001–NM–182–AD.

Applicability: Model 757–200 series airplanes, as listed in Boeing Special Attention Service Bulletin 757–52–0077, dated February 15, 2001, and Model 757–300 series airplanes, as listed in Boeing Special Attention Service Bulletin 757–52–0078, dated February 15, 2001; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the adjuster rod in the passenger door guide arm assembly, which could prevent the door from opening or closing during normal or emergency operations, resulting in inability to evacuate the crew and passengers in an emergency, accomplish the following:

Service Bulletin References

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For Model 757–200 airplanes: Boeing Special Attention Service Bulletin 757–52–0077, dated February 15, 2001; and

(2) For Model 757–300 airplanes: Boeing Special Attention Service Bulletin 757–52–0078, dated February 15, 2001.

Inspection of Part Mark

(b) Within 18 months of the effective date of this AD: Inspect the part mark on the guide arm assembly of the number 1 left passenger door, in accordance with the applicable service bulletin.

Follow-on Actions

(c) If the inspection of the part mark required by paragraph (b) of this AD reveals the name of a supplier, prior to further flight, accomplish the action specified in paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) If the part mark of supplier CDSL is found on the guide arm assembly, then replace the adjuster rod of the guide arm assembly per Figure 2 of the applicable service bulletin.

(2) If the part mark of a supplier other than CDSL is found on the guide arm assembly, then the adjuster rod is satisfactory, and no further action is required by this paragraph.

(d) If no part mark is found during the inspection required by paragraph (b) of this AD, prior to further flight accomplish the action specified in either paragraph (d)(1) or (d)(2) of this AD.

(1) Replace the adjuster rod of the guide arm assembly per Figure 2 of the applicable service bulletin.

(2) Test the hardness of the adjuster rod of the guide arm assembly per Figure 3 of the applicable service bulletin.

(i) If the hardness of the adjuster rod is less than 44 HRC (Rockwell C Hardness scale), then install a new adjuster rod per Figure 2 of the applicable service bulletin.

(ii) If the hardness of the adjuster rod is greater than 44 HRC, then the adjuster rod is satisfactory, and no further action is required by this paragraph.

Parts Installation

(e) As of the effective date of this AD, no person may install on any airplane an adjuster rod in any passenger door guide arm assembly which has either no part mark on the guide arm assembly or has the part mark of supplier CDSL.

Alternative Methods of Compliance

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

Issued in Renton, Washington, on February 3, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2680 Filed 2–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–167217–03]

RIN 1545–BD03

Electronic Filing of Duplicate Forms 5472

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking, notice of proposed rulemaking by cross-reference to temporary regulations, and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations providing that a Form 5472 that is timely filed electronically is treated as satisfying the requirement timely to file a duplicate Form 5472 with the Internal Revenue Service

Center in Philadelphia, Pennsylvania. This action is necessary to clarify how the duplicate filing requirements for Form 5472 apply when a reporting corporation electronically files its income tax return (including any attachments such as Form 5472). This document affects corporations subject to the reporting requirements in sections 6038A and 6038C that file Form 5472 electronically. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by May 10, 2004. Outlines of topics to be discussed at the public hearing scheduled for May 27, 2004, must be received by May 6, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–167217–03), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–167217–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs.* The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Edward Barret, (202) 435–5265; concerning submissions and the hearing, Robin Jones, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

The temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR part 1. To clarify how the duplicate filing requirements for Form 5472 apply when a reporting corporation electronically files its income tax return (including any attachments such as Form 5472), the temporary regulations amend § 1.6038A–2(d) to provide that a Form 5472 that is timely filed electronically is treated as satisfying the requirement timely to file a duplicate Form 5472 with the Internal Revenue Service Center in Philadelphia, Pennsylvania. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

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

Comments and Public Hearing

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

A public hearing has been scheduled for May 27, 2004, in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written or electronic comments by May 10, 2004, and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by May 6, 2004. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Edward Barret, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.6038A–1 is amended by revising paragraph (n)(2) to read as follows:

§ 1.6038A–1 General requirements and definitions.

* * * * *

(n) * * * (1) * * *

(2) *Section 1.6038A–2.* Section 1.6038A–2 (relating to the requirement to file Form 5472) generally applies for taxable years beginning after July 10, 1989. However, § 1.6038A–2 as it applies to reporting corporations whose sole trade or business in the United States is a banking, financing, or similar business as defined § 1.864–4(c)(5)(i) applies for taxable years beginning after December 10, 1990. The final sentence of § 1.6038A–2(d) applies for taxable years ending on or after January 1, 2003. For taxable years ending prior to January 1, 2003, see § 1.6038A–2(d) in effect prior to January 1, 2003 (see 26 CFR part 1 revised as of April 1, 2002).

* * * * *

Par. 3. Section 1.6038A–2 is amended by revising paragraph (d) to read as follows:

§ 1.6038A–2 Requirement of return.

* * * * *

(d) [The text of the proposed amendment to § 1.6038A–2(d) is the same as the text for § 1.6038A–2T(d)

published elsewhere in this issue of the **Federal Register**.]

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–2644 Filed 2–6–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[TX–052–FOR]

Texas Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposes to add a new policy document to its program that describes mine permit implementation actions that would not, in the opinion of the Railroad Commission of Texas (Commission), be considered permit revisions and are, therefore, not subject to Commission review and approval. Texas intends to revise its program to improve operational efficiency.

This document gives the times and locations that the Texas program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., c.s.t., March 10, 2004. If requested, we will hold a public hearing on the amendment on March 5, 2004. We will accept requests to speak at a hearing until 4 p.m., c.s.t. on February 24, 2004.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

You may review copies of the Texas program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430, Internet address: *mwolfrom@osmre.gov.*

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, Capitol Station, P.O. Box 12967, Austin, Texas 78711–2967, Telephone (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. Internet address: *mwolfrom@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Texas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program effective February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program in the February 27, 1980, **Federal Register** (45 FR 12998). You can also find later actions concerning the Texas program and program amendments at 30 CFR 943.10, 943.15 and 943.16.

II. Description of the Proposed Amendment

By letter dated December 23, 2003 (Administrative Record No. TX–657), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Texas sent the amendment at its own initiative. Below is a summary of the changes proposed by Texas. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

Texas proposes to add a new policy document to its program that describes mine permit implementation actions that would not, in the opinion of the Commission, be considered permit revisions and are, therefore, not subject to Commission review and approval. If approved, the implementation of this policy will impact the way current mine permit applications are prepared and how revisions are processed.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Tulsa Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: TX–052-FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Tulsa Field Office at (918) 581–6430.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.s.t. on February 24, 2004. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

The revisions made at the initiative of the State do not have Federal counterparts and have been reviewed and a determination made that they do not have takings implications. This determination is based on the fact that the provisions have no substantive effect on the regulated industry.

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Texas program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Texas program has no effect on Federally-recognized Indian tribes.

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

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based upon the fact that the provisions are not expected to have a substantive effect on the regulated industry.

Small Business Regulatory Enforcement Fairness Act

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

determination is based upon the fact that the State provisions are not expected to have a substantive effect on the regulated industry.]

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State provisions are not expected to have a substantive effect on the regulated industry.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 20, 2004.

Charles E. Sandberg,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 04–2706 Filed 2–6–04; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 72, 75, and 96

[FRL–7619–9]

Public Hearings for Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Interstate Air Quality Rule) and Proposed National Emission Standards for Hazardous Air Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rules; announcement of public hearings.

SUMMARY: In a **Federal Register** document published on February 2, 2004, EPA announced the dates and cities for three public hearings to be held jointly for two related proposals. Today's document provides the remaining details for the hearings, including the facility locations and daily schedules.

The public hearings are for the proposed ''Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Interstate Air Quality Rule)'' and the ''Proposed National Emission Standards for Hazardous Air Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units,'' which is also known as the proposed Utility Mercury Reductions Rule. These proposals were published in the **Federal Register** on January 30, 2004.

DATES: The three 2-day public hearings will be held concurrently on February 25 and 26, 2004. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the public hearings.

ADDRESSES: The hearings will be held at the following locations:

1. Hilton Chicago, 720 South Michigan Avenue, Chicago, Illinois 60605, phone 312–726–7500;
2. Wyndham Philadelphia at Franklin Plaza, 17th and Race Streets, Philadelphia, PA 19103, phone 215–448–2000;
3. Holiday Inn Raleigh-Durham Airport, 4810 Old Page Road, Research Triangle Park, NC, 919–941–6000.

Written comments on these proposed rules may also be submitted to EPA electronically, by mail, by facsimile, or through hand delivery/courier. Please refer to the proposals for the addresses and detailed instructions.

Documents relevant to this action are available for public inspection at the EPA Docket Center, located at 1301 Constitution Avenue, NW., Room B102, Washington, DC between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Documents are also available through EPA's electronic Docket system at *http://www.epa.gov/edocket.*

The EPA Web sites for the rulemakings, which include the proposals and information about the public hearings, are at *http://www.epa.gov/interstateairquality* and *http://www.epa.gov/mercury.*

FOR FURTHER INFORMATION CONTACT: If you would like to speak at the public hearings or have questions concerning the public hearings, please contact JoAnn Allman at the address given below under **SUPPLEMENTARY INFORMATION.** Questions concerning the Interstate Air Quality Rule should be addressed to Scott Mathias, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division (C539–01), Research Triangle Park, NC 27711, telephone number (919) 541–5310, e-mail at *mathias.scott@epa.gov.* Questions concerning the Utility Mercury Reductions Rule should be addressed to William Maxwell, U.S. EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Combustion Group (C439–01), Research Triangle Park, NC 27711, telephone number (919) 541–5430, e-mail at *maxwell.bill@epa.gov.*

SUPPLEMENTARY INFORMATION:

The Proposed Rules

The EPA's proposed Interstate Air Quality Rule would reduce emissions of sulfur dioxide and nitrogen dioxides in 29 eastern States and the District of Columbia that are significantly contributing to fine particulate matter and 8-hour ozone nonattainment problems in downwind States. Each State would be required to adopt control measures to meet specific statewide emission reduction requirements. The EPA believes that the most cost-effective way for States to achieve the required reductions would be to regulate utilities under a cap and trade program similar to EPA's highly successful Acid Rain Program. The proposed Utility Mercury Reductions Rule provides options that would reduce mercury emissions and would set a mandatory, declining cap on the total mercury emissions allowed from utilities nationwide. The proposal also would reduce nickel emissions from utilities. The EPA is coordinating these rulemakings to allow the emissions reductions to be achieved in the most cost-effective manner by sources affected by both actions.

Public Hearings

The proposals for which EPA is holding the public hearings were published in the **Federal Register** on January 30, 2004 (69 FR 4566 for the Interstate Air Quality Rule and 69 FR 4652 for the Utility Mercury Reductions Rule) and are available on the Web sites listed under **ADDRESSES.** The public hearings will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rules. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearings. Written comments must be postmarked by the last day of the comment period, as specified in the proposals.

The three 2-day public hearings will be held concurrently in Chicago, Illinois; Philadelphia, Pennsylvania; and Research Triangle Park, North Carolina. Each hearing will last two days and is scheduled for February 25 and 26, 2004. Persons wishing to present oral testimony for one or both proposals may speak on either day. The meeting facilities and their phone numbers are provided above under **ADDRESSES.**

If you would like to present oral testimony at the hearings, please notify JoAnn Allman, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, C539–02, Research Triangle Park, NC 27711, telephone (919) 541–1815, e-mail *allman.joann@epa.gov* no later than February 20, 2004. She will provide you with a specific time and date to speak.

The public hearings will begin each day at 8 a.m. and continue into the evening until 9 p.m., or later if necessary, depending on the number of speakers. On the evening of the second day, February 26, EPA will accommodate all speakers that arrive and register by 8 p.m. or that have arranged in advance to speak at a later time. The EPA is scheduling lunch breaks from 12:30 until 2 p.m. and dinner breaks from 6 to 7:30 p.m. each day.

Oral testimony will be limited to 10 minutes for each commenter to address either or both proposals. We will not be providing equipment for commenters to show overhead slides or make computerized slide presentations unless we receive special requests in advance. Commenters should notify JoAnn Allman if they will need specific equipment. The EPA encourages commenters to provide written versions of their oral testimonies either electronically on computer disk or CD ROM or in paper copy.

The hearing schedules, including lists of speakers, will be posted on EPA's Web pages for the proposals at *http://www.epa.gov/interstateairquality* and *http://www.epa.gov/mercury* prior to the hearing. Verbatim transcripts of the hearings and written statements will be included in the rulemaking dockets.

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

The EPA has established the official public docket for the Interstate Air Quality Rule under Docket ID No. OAR–2003–0053. The EPA has established the official public docket for the Utility Mercury Reductions Rule under Docket ID No. OAR–2002–0056. The EPA has also developed Web sites for the proposals at the addresses given above. Please refer to the proposals, which were published in the **Federal Register** on January 30, 2004, for detailed information on accessing information related to the proposals.

Dated: February 4, 2004.

Anna B. Duncan,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 04–2814 Filed 2–9–04; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 03–237; FCC 03–289]

Interference Temperature Operation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: On January 21, 2004 (69 FR 2863), the Commission published proposed rules in the Notice of Inquiry and Notice of Proposed Rule Making. The Notice of Inquiry requests comment, information and research on a number of issues relating to the development and use of the interference temperature metric and for managing a transition from the current transmitter-based approach to the new interference temperature paradigm. The Notice of Proposed Rule Making proposes technical rules that would establish interference temperature limits and procedures for assessing the interference temperature to permit expanded unlicensed operation. This document contains a correction to the ''ET Docket No.'', which was inadvertently published incorrectly.

DATES: Comments must be filed on or before April 5, 2004, and reply comments must be filed on or before May 5, 2004.

FOR FURTHER INFORMATION CONTACT: Gary Thayer (202) 418–2290, John Reed (202) 418–2455, or Ahmed Lahjouji (202) 418–2061, Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document proposing to amend part 15 in the **Federal Register** of January 21, 2004, (69 FR 2863). This document corrects the **Federal Register** as it appeared. In FR Doc. 04–1192, published on January 21, 2004 (69 FR 2863), the Commission is correcting the docket no. ''ET Docket No. 03–327'' to reflect the correct docket no. ''ET Docket No. 03–237''. In rule FR Doc. 04–1192 published on January 21, 2004 (69 FR 2863), the Commission is correcting ET Docket No. 03–327 to read as ET Docket No. 03–237:

On page 2863, in the second column, ET Docket No. 03–327 is corrected to read as ET Docket No. 03–237.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–2639 Filed 2–6–04; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 69, No. 26

Monday, February 9, 2004

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–005–1]

Notice of Request for Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to initiate a new information collection activity to support the export of animal products from the United States.

DATES: We will consider all comments that we receive on or before April 9, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 04–005–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–005–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 04–005–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information on the export of animal products from the United States, contact Dr. Joyce Bowling, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737; (301) 734–3277. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Export of Animal Products from the United States.

OMB Number: 0579–XXXX.

Type of Request: Approval of a new information collection.

Abstract: The export of agricultural commodities, including animals and animal products, is a major business in the United States and contributes to a favorable balance of trade. To facilitate the export of U.S. animals and products, the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), maintains information regarding the import health requirements of other countries for animals and animal products exported from the United States.

Many countries that import animal products from the United States require a certification from APHIS that the United States is free of certain diseases. These countries may also require that our certification statement contain additional declarations regarding the U.S. animal products being exported. This certification must carry the USDA seal and be endorsed by a Federal or approved APHIS representative (*i.e.*, a Plant Protection and Quarantine port officer). Veterinary Services Form 16–4, Health Certificate—Export Certificate—Animal Products, is used to meet these requirements.

Regulations pertaining to export certification of animals and animal products are contained in 9 CFR parts 91 and 156.

We are asking the Office of Management and Budget (OMB) to approve our use of this form.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: U.S. exporters of animal products.

Estimated annual number of respondents: 30,000.

Estimated annual number of responses per respondent: 4.

Estimated annual number of responses: 120,000.

Estimated total annual burden on respondents: 60,000 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 3rd day of February 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–2689 Filed 2–6–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Timber Purchasers' Costs and Sales Data

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intention to extend an information collection. The collected information will help the Forest Service facilitate the appraisal and sale of timber. Information will be collected from purchasers of timber from National Forest System lands. This information is used to assist the Forest Service in updating the selling values and costs for the appraisal system.

DATES: Comments on this notice must be received in writing on or before April 9, 2004.

ADDRESSES: Comments concerning this notice should be sent via the U.S. Postal Service to Director, Forest and Rangeland Management, MAIL STOP 1105, Forest Service, USDA, 1400 Independence Avenue SW., Washington, DC 20250–1105.

Comments also may be submitted via facsimile to (202) 205–1045 or e-mail to *rbaumback@fs.fed.us.*

The public may inspect comments received in the Office of the Director of Forest and Rangeland Management, Third Floor, Northwest Wing, Yates Building, 201 14th Street SW., Washington, DC. Visitors are encouraged to call ahead to (202) 205–0893 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Rex Baumback, Timber Sale Contract Administration Specialist, Forest Management at (202) 205–0855.

SUPPLEMENTARY INFORMATION:

Background

Timber and other forest products on national forest lands are sold for the purpose of achieving the policies set forth in the Multiple-Use Sustained Yield Act of 1960, and the Forest Rangeland Renewable Resources Planning Act of 1974. Timber must not be sold for less than the advertised price pursuant to Public Law 94–588. This statutory language also requires the Forest Service not to sell timber below a minimum stumpage rate established by the Chief. This minimum value provides a way for the Forest Service to ensure that timber sales recover at least some of the variable costs associated with preparing and administering a timber sale.

Forest Service timber appraisals develop advertised prices using a transaction evidence or residual value form of appraisal. Transaction evidence appraisals begin with an average of past successful bids for timber on the stump adjusted to the timber sale and market conditions of the sale being appraised. Residual value appraisals subtract operating costs from the value of products sold.

The following costs and values are needed for the transaction evidence and residual value appraisal systems in the Forest Service: (1) Product value, (2) manufacturing cost, (3) falling and bucking, (4) skidding and loading, and (5) hauling. These costs can be provided by mail from purchasers, subject to verification.

The Forest Service collects product value and cost data from its timber purchasers to develop average value and cost information for appraisals. In many areas, lumber product values are purchased from the Western Wood Products Association. These average costs help appraisers estimate fair market value and develop advertised prices for national forest timber. Timber purchasers furnish cost and product value data in accordance with standard timber sale contract Forms FS–2400–6 and FS–2400–6T. These standard timber sale contracts contain the following standard contract provision:

B(T)6.9 Records. Upon request, Purchaser shall provide access to appropriate annual records in Purchaser's books and accounts to enable Forest Service to obtain and analyze accurate operating costs and selling price data for appropriate use in appraising Federal timber. However, upon receiving such a request from Contracting Officer, Purchaser may make written notice that such data shall be provided through an independent certified public accountant approved by Contracting Officer. Purchaser agrees that the certified public accountant shall do such work in accordance with specifications provided by Contracting Officer. Purchaser shall pay cost of such services. Data so provided shall be subject to acceptance by Forest Service and subject to review and adjustment, where needed, by Forest Service.

Operating cost and selling price data shall include that applicable for appraising timber obtained from Federal sources in or processed in the Region. Purchaser shall provide access to such data on behalf of subsidiary entities owned or controlled by Purchaser to the extent they participate in harvesting, manufacturing, or marketing said timber into products recognized in National Forest timber appraisals in the area. To a like extent, Purchaser shall request in writing Purchaser's contractors and subcontractors to make such data available to Forest Service.

Information so obtained shall be treated as confidential, as provided in regulations issued by the Secretary of Agriculture (7 CFR 1.12), and shall be available for review by parties from whom such data are obtained.

This standard contract provision was developed in consultation with timber industry groups, including but not limited to: Western Wood Products Association, National Forest Products Association, Western Forest Industries Association, and Industrial Forestry Association. Cost data are used towards the development of advertised rates for the sale of National Forest timber. Cost information is used by State and other agencies in their appraisals. Timber purchasers also rely upon cost collections to help them independently appraise the value of Federal timber and to estimate the cost of subcontracting certain aspects of harvesting Federal timber.

The Contracting Officer requests data from the timber sale purchasers; the Regional Office Forest Management Staff will analyyze the data.

Description of Information Collection

The following describes the information collection to be extended:

Title: Timber Purchasers' Costs and Sales Data.

OMB Number: 0596–0017.

Expiration Date of Approval: April 30, 2004.

Type of Request: Extension.

Abstract: Contracting Officers will collect and the Regional Office Forest Management Staff will evaluate the cost data, as provided by timber sale purchasers. Such data will remain confidential between the Forest Service and the timber sale purchaser who provided the information. Cost data are collected in several formats ranging from paper to electronic media. Some firms mail cost data to Regional Offices, others provide table space and copying facilities, still others provide on site access to electronic data. Data gathered in this information collection are not available from other sources.

Estimate of Annual Burden: 1 hour.

Type of Respondents: Timber sale purchasers.

Estimated Annual Number of Respondents: 20.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 20 hours.

Comment is Invited: Comment is invited on: (a) Whether the proposed collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clairity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including names and addresses when provided, will become a matter of public record and will be available for public inspection and copying. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: January 8, 2004.

Gloria Manning,

Associate Deputy Chief, National Forest System.

[FR Doc. 04–2664 Filed 2–6–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes Provincial Advisory Committee (DPAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes Provincial Advisory Committee will meet on February 26, 2004, starting at 8 a.m. at the Redmond New Historic Hotel Conference Room on 521 S. 6th Street, Redmond, Oregon. Agenda items will include an open public forum from 9:15 a.m. till 9:45 a.m., Review of standing subcommittees, and the remaining time will be spent identifying present and future PAC representation needs. All Deschutes Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Chris Mickle, Province Liaison, Deschutes NF, Crescent Rd., P.O. Box 208, Crescent, OR, 97754, phone (541) 433–3216.

Dated: February 2, 2004.

Leslie A.C. Weldon,

Deschutes National Forest Supervisor.

[FR Doc. 04–2674 Filed 2–6–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California, February 16, 2004. The meeting will include routine business, a discussion of larger scale projects, and the review and recommendation for implementation of submitted project proposals.

DATES: The meeting will be held February 16, 2004, from 4 p.m. until 7 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Don Hall, RAC Coordinator, Klamath National Forest, (530) 841–4468 or electronically at *donaldhall@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: February 3, 2004.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 04–2673 Filed 2–6–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Short Supply Regulations—Unprocessed Western Red Cedar.

Agency Form Number: None.

OMB Approval Number: 0694–0025.

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

Burden: 35 hours.

Average Time Per Response: 60 minutes per response.

Number of Respondents: 35 respondents.

Needs and Uses: The information is collected as supporting documentation for license applications to export western red cedar logs to enforce the Export Administration Act's prohibition against the export of such logs from State or Federal lands.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 or via 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 20230.

Dated: February 3, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–2648 Filed 2–6–04; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Request For Special Priorities Assistance.

Agency Form Number: BIS–999.

OMB Approval Number: 0694–0057.

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

Burden: 600 hours.

Average Time Per Response: 30 minutes per response.

Number of Respondents: 1,200 respondents.

Needs and Uses: The information collected on BIS–999 from defense contractors and suppliers, is required for the enforcement and administration of the Defense production Act and the Selective Service Act to provide Special Priorities Assistance under the Defense Priorities and Allocation System Regulations.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

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 20230.

Dated: February 3, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–2649 Filed 2–6–04; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-427–801, A-428–801, A-475–801, A-588–804, A-559–801, A-412–801]

Antifriction Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Preliminary Results Of Antidumping Duty Administrative Reviews, Partial Rescission Of Administrative Reviews, Notice Of Intent To Rescind Administrative Reviews, And Notice Of Intent To Revoke Order In Part

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

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Reviews, Partial Rescission of Administrative Reviews, Notice of Intent to Rescind Administrative Reviews, and Notice of Intent to Revoke Order in Part.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom. The merchandise covered by these orders are ball bearings and parts thereof (ball bearings) from France, Germany, Italy, Japan, Singapore, and the United Kingdom and spherical plain bearings and parts thereof from France. The reviews cover 173 manufacturers/exporters. The period of review is May 1, 2002, through April 30, 2003.

We have preliminarily determined that sales have been made below normal value by various companies subject to these reviews. If these preliminary results are adopted in our final results of administrative reviews, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who submit comments in these reviews are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: February 9, 2004.

FOR FURTHER INFORMATION CONTACT: The Department of Commerce (the Department) received numerous requests for reviews of companies under multiple orders. Please contact the appropriate analyst as outlined in the following chart at Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

COMPANY	COUNTRY	ANALYST
Ace Bearing and Transmission Co.	France, Germany, Italy	Edythe Artman
Acorn Industrial Service Limited	France, Germany, Italy	Jeffrey Frank
Aeroengine Bearings	United Kingdom	Catherine Cartsos
Aktif Endustrie Malzemeleri	France, Germany, Italy	Lyn Johnson
Alphateam SPRL	France, Germany, Italy	Catherine Cartsos
Asahi Seiko	Japan	Jennifer Moats
Australian Bearing Pty Ltd.	France, Germany, Italy	Dmitry Vladimirov
Baltic Bearing Supply	France, Germany, Italy	Yang Jin Chun
Barden/FAG	United Kingdom	Jeffrey Frank
Bearing and Tool GmbH	France, Germany, Italy	Brian Ellman
Bearing Discount International GmbH	France, Germany, Italy	Fred Aziz
Bearing Dynamics	France, Germany, Italy	Janis Kalnins
Bearing Net	France, Germany, Italy	Susan Lehman
Bearing Sales Corporation	France, Germany, Italy	Jeffrey Frank
BTM Bearing Trade F.C. Miltner	France, Germany, Italy, United Kingdom	Hermes Pinilla
Budapesti Sved Casapagy Ltd.	France, Germany, Italy, United Kingdom	Tom Schauer
Cantoni and C.S.N.C.	France, Germany, Italy	Sochieta Moth
CCVI Bearing Company	France, Germany, Italy	Kristin Case
Comal SNC	France, Germany, Italy	Dmitry Vladimirov
DCD Corporation	France, Germany, Italy	Jennifer Moats
Delta Export GmbH	France, Germany, Italy, United Kingdom	Minoo Hatten
EuroLatin Ex. Services	France, Germany, Italy	Sochieta Moth
Ever-on Corporation (formerly Taisho Kiko Co. Ltd.)	France, Germany, Italy	Kristin Case
FAG	Germany, Italy	Dmitry Vladimirov
Fair Friend Ent. Co. Ltd.	France, Germany, Italy	Kristin Case
Friedrich Picard GmbH	France, Germany, Italy	Susan Lehman
Frohlich and Dorken GmbH	France, Germany, Italy	Jeffrey Frank
Godiva	Germany	Fred Aziz
Han Sol Tech Corp./Yoo Shin Co.	France, Germany, Italy	Janis Kalnins
Hayley Import/Export	France, Germany, Italy	Yang Jin Chun
Heinz Knust	France, Germany, Italy	Brian Ellman
Hergenhan GmbH	France, Germany, Italy	Catherine Cartsos
Hoens Industrieel BV	France, Germany, Italy	Dmitry Vladimirov

COMPANY	COUNTRY	ANALYST
IBD Ltd.	France, Germany, Italy	Edythe Artman
IMA Corporation	Japan	Edythe Artman
INA	Germany	Susan Lehman
International Bearing Pte. Ltd.	France, Germany, Italy	Jennifer Moats
Interspecies Donath GmbH	France, Germany, Italy	Lyn Johnson
Italcuscinetti Group	France, Germany, Italy	Dunyako Ahmadu
Justy Corporation	France, Germany, Italy, Japan, United Kingdom	Dunyako Ahmadu
Kian Ho Bearings, Ltd.	France, Germany, Italy	Edythe Artman
KIS Antriebs Technik GmbH	France, Germany, Italy	Jennifer Moats
Koyo Seiko	Japan	Tom Schauer
KSM, Minamiguchi/Bearing MFG. Co.	France, Germany, Italy	Lyn Johnson
LTM Industrietechnik	France, Germany, Italy	Dmitry Vladimirov
M. Buchhalter Maschenmode/Hergenhan	France, Germany, Italy	Yang Jin Chun
Micaknowledge	France, Germany, Italy	Brian Ellman
Minetti SpA	France, Germany, Italy	Fred Aziz
Ming Hing Trading Company	France, Germany, Italy	Janis Kalnins
Motion Bearing Pte. Ltd.	France, Germany, Italy	Susan Lehman
Nachi-Fujikoshi	Japan	Minoo Hatten
Nankai Seiko	Japan	Catherine Cartsos
NPBS	Japan	Yang Jin Chun
NSK	Japan, United Kingdom	Dunyako Ahmadu
NTN	Japan	Hermes Pinilla
Osaka Pump Co. Ltd.	Japan	Edythe Artman
Paul Mueller	Germany	Dave Dirstine
Ringball Corporation	France, Germany, Italy, Japan	Dave Dirstine
Rodamietos Rovi	France, Germany, Italy	Jeffrey Frank
Roeirasa	France, Germany, Italy	Sochieta Moth
Rolling Bearing Co. Pty. Ltd.	France, Germany, Italy	Kristin Case
Rovi-Marcay	France, Germany, Italy	Tom Schauer
Rovi-Valencia	France, Germany, Italy	Minoo Hatten
Sapporo Precision Bearings, Inc.	Japan	Brian Ellman
SKF	France	Dunyako Ahmadu
SKF	Germany	Kristin Case
SKF	Italy	Sochieta Moth
SKF	United Kingdom	Kristin Case
SNR	France	Fred Aziz
Sprint Engineering	France, Germany, Italy	Sochieta Moth
Taisei Industries	Japan	Catherine Cartsos
Takeshita Seiko Co. Ltd.	Japan	Janis Kalnins
Taninaka Ltd.	France, Germany, Italy	Susan Lehman
TEC Engineering Co., Ltd.	Japan	Sochieta Moth
Timken	Germany	Kristin Case
Top G Trading Pte Ltd.	France, Germany, Italy	Brian Ellman
Weber Kugellager International	France, Germany, Italy	Fred Aziz
Withus Technology Corp.	France, Germany, Italy	Janis Kalnins
Wyko Export	France, Germany, Italy	Yang Jin Chun
Yoshida Shokai	Japan	Dmitry Vladimirov

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department published in the **Federal Register** (54 FR 20909) the antidumping duty orders on ball bearings from France, Germany, Italy, Japan, Singapore, and the United Kingdom and on spherical plain bearings and parts thereof from France. On July 1, 2003, in accordance with 19 CFR 351.213(b), we published a notice of initiation of administrative reviews of these orders (68 FR 39055). On July 29, 2003, we published a second notice of initiation of administrative reviews (68 FR 44524) of companies that had been omitted inadvertently from the July 1, 2003, **Federal Register** notice.

After we initiated our reviews, we learned that the company Taisho Kiko had changed its name to Ever-On Corporation. Subsequently, even though we initiated a review of this firm as Taisho Kiko, for the remainder of this review, we will refer to this company as Ever-On Corporation. In addition, we initiated reviews of Kugellager Weber and Weber Kugellager. We learned after initiation that these two names were used for the same company (Letter from Weber Kugellager International to Secretary of Commerce, dated September 15, 2003, on file in room B-099 of the Commerce Department). As such, we will refer to this firm for the remainder of this review as Weber Kugellager. Similarly, we also initiated reviews of BTM and BTM Bearing Trade F.C. Miltner, but learned after initiation that these were variant names for the same firm.

Rescission of Reviews

Subsequent to the publication of our initiation notices, we received timely withdrawals of the requests we had received for reviews of Budapesti Sved Csapagy Ltd. (U.K.), Delta Export GmbH (U.K.), Godiva Bearing Ltd. (Germany), Justy Corp. (France, Germany, Italy, Japan, and U.K.), Nachi (Japan), NSK Bearings Europe (U.K.), Ringball Corporation (Japan), SNR Roulements (Japan), Taisei Industries, Ltd. (Japan), TEC Engineering (Japan), and Yoshida Shokai (Japan) with respect to ball bearings. Because there were no other requests for review for these companies and no interested party objected, we are rescinding the reviews with respect to these companies in accordance with 19 CFR 351.213(d). We also received timely withdrawals of the requests we had

received for reviews of Budapesti Sved Csapagy Ltd (France, Germany, and Italy), Delta Export GmbH (France, Germany, and Italy), and Sapporo Precision Bearings, Inc. (Japan). Reviews for these three companies were also requested by other interested parties who did not withdraw their original requests. Consequently, we have continued our review of these companies.

On January 9, 2004, the petitioner withdrew its request for the review of ball bearings from Germany concerning INA-Schaeffler KG (INA). INA opposed the withdrawal, claiming that the Department should not honor the request for withdrawal for the following reasons: 1) the withdrawal is untimely; 2) INA has expended considerable time and effort already to prepare responses to the Department's original and supplemental questionnaires; 3) the Department has already expended considerable time and effort to analyze INA's responses; 4) because the Department already has INA's most current sales information, it is now able to calculate a more accurate dumping margin; 5) the decision to rescind the review may impede the Department's ability to gather information from involuntary respondents in the future; 6) circumstances surrounding INA's current review (for example, its affiliation with FAG) distinguish it from past cases where the Department has rescinded reviews for companies for which withdrawal requests were made past the 90-day deadline in the Department's regulations; 7) having already cooperated with the review thus far, INA has become an ''interested party'' to the review and thus has a vested interest in the continuance of the review.

Although we have accepted untimely withdrawals of requests for review elsewhere, the circumstances surrounding the review of INA are different from other situations. First, we have decided to collapse INA with another company under review, FAG, thereby treating the two requested firms as one entity. See the *Collapsing Decision* section of this notice for more details. We have not received a withdrawal of the request for review of FAG. Second, we had expended effort and resources in our analysis of INA prior to the untimely withdrawal such that we were quite advanced in the review. For these reasons, we have not rescinded the review of the order on ball bearings and parts thereof from Germany with respect to INA.

On January 29, 2004, we received a withdrawal of the request we had received for the review of the order on ball bearings and parts thereof from Japan from IMA Corporation. Even though this withdrawal came later than 90 days after the initiation of the instant review, we are rescinding the review for IMA because there were no other requests for review for this company and no other interested party objected.

Intent to Rescind Reviews

Although we initiated administrative reviews of the orders on ball bearings and parts thereof from France, Germany, and Italy that were exported by Comal SNC and Interspecies Donath GmbH, these firms were unlocatable and we were unable to conduct administrative reviews of them. In addition, we initiated reviews for BTM with respect to ball bearings from France, Germany, Italy, and the United Kingdom. Subsequent to the initiation of the reviews, BTM informed us that, although it is a reseller of subject bearings, all of its suppliers had knowledge at the time of sale that the merchandise was destined for the United States. If in fact the suppliers had knowledge that the sales they made to this trading company were destined for exportation to the United States, then the suppliers would be the proper parties to review because their sales would be the point in the sales chain at which merchandise ''is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States...'' pursuant to section 772(a) of the Tariff Act of 1930, as amended (the Act). Therefore, we intend to rescind the administrative reviews with respect BTM.

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) and constitute the following merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all AFBs that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following *Harmonized Tariff Schedules* (HTSUS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

2. *Spherical Plain Bearings, Mounted and Unmounted, and Parts Thereof:* These products include all spherical plain bearings that employ a spherically-shaped sliding element and include spherical plain rod ends.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.50.10, 8483.30.80, 8483.90.30, 8485.90.00, 8708.93.5000, 8708.99.50, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

Although the HTSUS item numbers above are provided for convenience and customs purposes, written descriptions of the scope of these proceedings remain dispositive.

The size or precision grade of a bearing does not influence whether the bearing is covered by one of the orders. These orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, etc.) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of the these orders. For unfinished parts, such parts are included if (1) they have been heat-treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not coverd by these orders are those that will be subject to heat treatment after importation. The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scope of these orders.

For a listing of scope determinations which pertain to the orders, see the Scope Determination Memorandum (Scope Memorandum) from the Antifriction Bearings Team to Laurie Parkhill, dated April 1, 2002. The Scope Memorandum is on file in the Central Records Unit (CRU), Main Commerce Building, Room B-099, in the General Issues record (A-100–001) for the 02/03 reviews.

Verification

As provided in section 782(i) of the Act, we will verify information provided by certain respondents using standard verification procedures, including on-site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and the selection of original documentation containing relevant information. Our verification results will be outlined in the public versions of the verification reports, which will be placed on file in the CRU, Room B-099.

Use of Neutral Facts Available

Weber Kugellager responded in a timely manner to our requests for information but it did not provide U.S. and home-market sales databases that we could use to calculate dumping margins for the three country-specific reviews underway. Because we have not yet afforded Weber Kugellager the opportunity to correct the deficiencies in its responses for the preliminary results of these administrative reviews we have calculated a rate for Weber Kugellager based on neutral facts available. We calculated a margin for Weber Kugellager in each country-specific review by calculating a simple average margin using the non-*de minimis* and non-adverse facts-available rates we determined for the other respondents in each of the country-specific reviews for this period. We will issue a supplemental questionnaire to Weber Kugellager to allow it the opportunity to correct its responses. We will analyze the sufficiency of the response and issue the preliminary results of our analysis prior to the deadline for the case briefs in these reviews.

Use of Adverse Facts Available

In accordance with section 776(a) of the Act, we preliminarily determine that the use of facts available as the basis for the weighted-average dumping margin is appropriate for the following companies:

Ace Bearing and Tool (France, Germany, and Italy)
Aeroengine Bearings (United Kingdom)
Aktif Endustrie (France, Germany, and Italy)
Alphateam SPRL (France, Germany, and Italy)
Australian Bearing Pty Ltd. (France, Germany, and Italy)
Baltic Bearing Supply (France, Germany, and Italy)
Bearing Dynamics (France, Germany, and Italy)
Bearing Sales Corp. (France, Germany, and Italy)
Bearing and Tool GmbH (France, Germany, and Italy)
Budapesti Sved Csapagy Ltd. (France, Germany, and Italy)
Cantoni and C.S.N.C (France, Germany, and Italy)
CCVI Bearing Co. (France, Germany, and Italy)
DCD Corporation (France, Germany, and Italy)
Delta Export (France, Germany, and Italy)
EuroLatin Services (France, Germany, and Italy)
Fair Friend Ent. CO. Ltd. (France, Germany, and Italy)
Friedrich Picard GmbH (France, Germany, and Italy)
Frohlich and Dorken GmbH (France, Germany, and Italy)
Han Sol Technology Corporation (France, Germany, and Italy)
Hayley Import and Export (France, Germany, and Italy)
Heinz Knust (France, Germany, and Italy)
Hergenhan GmbH (France, Germany, and Italy)
Hoens Industrieel BV (France, Germany, and Italy)
IBD Ltd. (France, Germany, and Italy)
International Bearing Pte. Ltd. (France, Germany, and Italy)
Italcuscinetti Group (France, Germany, and Italy)
Kian Ho Bearings (France, Germany, and Italy)
KIS Antriebs Technik GmbH (France, Germany, and Italy)
KSM Minamiguchi/Bearing Manufacturing Co. (France, Germany, and Italy)
LTM Industrietechnik (France, Germany, and Italy)
M. Buchhalter Maschenmode/ Hergenhan (France, Germany, and Italy)
Micaknowledge (France, Germany, and Italy)
Minetti SPA (France, Germany, and Italy)
Ming Hing Trading Co. (France, Germany, and Italy)
Motion Bearing Pte. Ltd. (France, Germany, and Italy)
Rodamietos Rovi (France, Germany, and Italy)
Roeirasa (France, Germany, and Italy)
Rovi-Marcay (France, Germany, and Italy)
Rovi-Valencia (France, Germany, and Italy)
Taninaka Ltd. (France, Germany, and Italy)
Top G Trading Company (France, Germany, and Italy)
Withus Technology Corporation (France, Germany, and Italy)
Wyko Export (France, Germany, and Italy)

These companies did not submit adequate responses to our antidumping duty questionnaire.[1] Consequently, we find that they have withheld ''information that has been requested by the administering authority'' under section 776(a)(1) of the Act. Further, Acorn Industrial Service filed two responses to section A of our questionnaire on August 15, 2003, and September 12, 2003, improperly. We rejected each response as being filed improperly in accordance with 19 CFR 351.303 and 304 and gave Acorn Industrial Service additional time to submit a response to our original questionnaire properly. Acorn did not submit any other information concerning bearings it exported to the United States from Germany. Therefore, having no information on the record, we find that this firm also did not provide ''information that has been requested by the administering authority'' under section 776(a)(1) of the Act.

In accordance with section 776(b) of the Act, we are making an adverse inference in our application of the facts available. This is appropriate because the companies identified above have not provided appropriate responses to our requests for information and have not provided any acceptable rationale for their non-responses. Therefore, we find that they have not acted to the best of their ability in providing us with relevant information which is under their control. As adverse facts available for these firms, we have applied the highest rate which we have calculated for any company in any segment of the relevant proceeding on ball bearings from the countries for which these firms have been reviewed. We have selected these rates because they are sufficiently high as to reasonably assure that these firms do not obtain a more favorable result by failing to cooperate. Specifically, the rates are as follows: 66.42 percent for France, 70.41 percent for Germany, 68.29 percent for Italy, and 61.14 percent for the United Kingdom.

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information used for facts available by reviewing independent sources reasonably at its disposal. Information

[1] See memo from analyst to the file, ''Administrative Review of the Antidumping Duty Order on Antifriction bearings and Parts Thereof from Germany - Responses to Questionnaire (December 11, 2003), Administrative Review of the Antidumping Duty Order on Antifriction Bearings and Parts Thereof from Italy - Responses to Questionnaire (December 11, 2003), and Administrative Review of the Antidumping Duty Order on Antifriction Bearings and Parts Thereof from France - Responses to Questionnaire (December 11, 2003).''

from a prior segment of the proceeding or from another company in the same proceeding constitutes secondary information. The Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, at 870 (1994) (SAA), provides that the word ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. As explained in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (*Tapered Roller Bearings and Parts Thereof from Japan*), in order to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. Unlike other types of information, however, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, with respect to an administrative review, if the Department chooses as facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period.

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. See *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996), where the Department disregarded the highest dumping margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Further, in accordance with *F.LII De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027 (Fed. Cir. June 16, 2000), we also examine whether information on the record would support the selected rates as reasonable facts available.

We find that the rates which we are using for these preliminary results have probative value. We compared the selected margins to margins calculated on individual sales of the merchandise in question made by the French, German, Italian, and U.K. companies covered by the instant review. We found a number of sales, made in the ordinary course of trade and in commercial quantities, with dumping margins near or exceeding the rates under consideration. The details of this analysis are contained in the memoranda from the case analysts to Laurie Parkhill.[2] This evidence supports an inference that the selected rates reflect the actual dumping margins for the firms in question.

These rates are the current cash-deposit rates for a number of firms (*e.g.*, in the Germany proceeding, 70.41 percent is the current deposit rate for, among other firms, Timken (formerly Torrington Nadellager), NTN, Bearings Discount International GmbH, Motion Bearings, and Alphateam SPRL). Therefore, we find that these rates are relevant and have probative value.

Furthermore, there is no information on the record that demonstrates that the rates we have selected are inappropriate for use as the total adverse facts-available rates for the companies in question. Therefore, we consider the selected rates to have probative value with respect to the firms in question in these reviews and to reflect the appropriate adverse inferences.

Intent to Revoke

On May 30, 2003, Paul Mueller requested the revocation of the order covering ball bearings and parts thereof from Germany as it pertains to its sales.

Under section 751(d)(1) of the Act, the Department ''may revoke, in whole or in part'' an antidumping duty order upon completion of a review. Although Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is set forth under 19 CFR 351.222. Under subsection 351.222(b), the Department may revoke an antidumping duty order in part if it concludes that (i) an exporter or producer has sold the merchandise at not less than normal value for a period of at least three consecutive years, (ii) the exporter or producer has agreed in writing to its immediate reinstatement in the order if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than normal value, and (iii) the continued application of the antidumping duty order is no longer necessary to offset dumping. Subsection 351.222(b)(3) states that, in the case of an exporter that is not the producer of subject merchandise, the Department normally will revoke an order in part under subsection 351.222(b)(2) only with respect to subject merchandise produced or supplied by those companies that supplied the exporter during the time period that formed the basis for revocation.

A request for revocation of an order in part must address three elements. The company requesting the revocation must do so in writing and submit the following statements with the request: (1) The company's certification that it sold the subject merchandise at not less than normal value during the current review period and that, in the future, it will not sell at less than normal value; (2) the company's certification that, during each of the consecutive years forming the basis of the request, it sold the subject merchandise to the United States in commercial quantities; (3) the agreement to reinstatement in the order if the Department concludes that the company, subsequent to revocation, has sold the subject merchandise at less than normal value. See 19 CFR 351.222(e)(1).

We preliminarily determine that the request from Paul Mueller meets all of the criteria under 19 CFR 351.222(e)(1). With regard to the criteria of subsection 351.222(b)(2), our preliminary margin calculations show that this firm sold ball bearings at not less than normal value during the current review period. See dumping margins below. In addition, it sold ball bearings at not less than normal value in the two previous administrative reviews in which it was involved. See *Ball Bearings and Parts Thereof from France, et al; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part*, 67 FR 55780, 55781 (August 30, 2002), covering the period May 1, 2000, through April 30, 2001, and *Ball Bearings and Parts Thereof From France, et al: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Review in Part, and Determination Not to Revoke Order in Part*, 68 FR 35623, 35625 (June 16, 2003), covering the period May 1, 2001, through April 30, 2002.

Based on our examination of the sales data submitted by Paul Mueller, we

[2] See *The Use of Facts Available and Corroboration of Secondary Information for Italy* (February 2, 2004), *The Use of Facts Available and Corroboration of Secondary Information for France* (February 2, 2004), *The Use of Facts Available and Corroboration of Secondary Information for Germany* (February 2, 2004), and *The Use of Facts Available and Corroboration of Secondary Information for the United Kingdom* (February 2, 2004) (collectively, Corroboration Memoranda).

preliminarily determine that Paul Mueller sold the subject merchandise in the United States in commercial quantities in each of the consecutive years cited by Paul Mueller to support its request for revocation. See preliminary results calculation memorandum for Paul Mueller, dated February 2, 2004, which is in the Department's CRU, Room B-099. Thus, we preliminarily find that Paul Mueller had zero or *de minimis* dumping margins for the last three consecutive administrative reviews and sold in commercial quantities in all three years. Also, we preliminarily determine that application of the antidumping order to Paul Mueller is no longer warranted for the following reasons: 1) the company had zero or *de minimis* margins for a period of at least three consecutive years; 2) the company has agreed to immediate reinstatement of the order if the Department finds that it has resumed making sales at less than fair value; 3) the continued application of the order is not otherwise necessary to offset dumping.

Therefore, we preliminarily determine that Paul Mueller qualifies for revocation of the order on ball bearings and parts thereof pursuant to 19 CFR 351.222(b)(2) and that the order with respect to merchandise produced and exported by Paul Mueller should be revoked.

If these preliminary findings are affirmed in our final results, we will revoke the order in part with respect to German ball bearings produced and exported by Paul Mueller and, in accordance with 19 CFR 351.222(f)(3), we will terminate the suspension of liquidation for ball bearings produced and exported by Paul Mueller that were entered, or withdrawn from warehouse, for consumption on or after May 1, 2003, and will instruct CBP to refund any cash deposits for such entries.

Export Price and Constructed Export Price

For the price to the United States, we used export price (EP) or constructed export price (CEP) as defined in sections 772(a) and (b) of the Act, as appropriate. Due to the extremely large volume of transactions that occurred during the period of review and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled CEP sales in accordance with section 777A of the Act. When a firm made more than 10,000 CEP sales transactions to the United States of merchandise subject to a particular order, we reviewed CEP sales that occurred during sample weeks. We selected one week from each two-month period in the review period, for a total of six weeks, and analyzed each transaction made in those six weeks. The sample weeks are as follows: May 26 June 1, 2002; August 4 10, 2002; September 15 21, 2002; November 17 - 23, 2002; December 29, 2003 January 4, 2003; April 13 - 19, 2003. We reviewed all export-price sales transactions made during the period of review.

We calculated export price and CEP based on the packed F.O.B., C.I.F., or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for discounts and rebates. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and the SAA at 823–824, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes commissions, direct selling expenses, indirect selling expenses, and U.S. repacking expenses. When appropriate, in accordance with section 772(d)(2) of the Act, we also deducted the cost of any further manufacture or assembly, except where we applied the special rule provided in section 772(e) of the Act. See below. Finally, we made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act.

With respect to subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers, *e.g.*, parts of bearings that were imported by U.S. affiliates of foreign exporters and then further processed into other products which were then sold to unaffiliated parties, we determined that the special rule for merchandise with value added after importation under section 772(e) of the Act applied to all firms, except NPBS, that added value in the United States.

Section 772(e) of the Act provides that, when the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise sold by the exporter or producer to an unaffiliated customer, if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated purchaser. Based on this analysis, we determined that the estimated value added in the United States by all firms accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States. See 19 CFR 351.402(c) for an explanation of our practice on this issue. Therefore, we preliminarily determine that for all firms the value added is likely to exceed substantially the value of the subject merchandise. Also, for these firms, we determine that there was a sufficient quantity of sales remaining to provide a reasonable basis for comparison and that the use of these sales is appropriate. See analysis memoranda for Barden U.K., INA/FAG, Koyo Seiko Co. Ltd., NMB/Pelmec, NSK, NTN, Paul Mueller, SKF France, SKF Germany, and SKF Italy, dated February 2, 2004. Accordingly, for purposes of determining dumping margins for the sales subject to the special rule, we have used the weighted-average dumping margins calculated on sales of identical or other subject merchandise sold to unaffiliated persons.

For NPBS, we determined that the special rule did not apply because the value added in the United States did not exceed substantially the value of the subject merchandise. Consequently, NPBS submitted a complete response to our further-manufacturing questionnaire which included the costs of the further processing performed by its U.S. affiliate. Since the majority of NPBS's products sold in the United States were further processed, we analyzed all sales.

No other adjustments to export price or CEP were claimed or allowed.

Normal Value

Based on a comparison of the aggregate quantity of home-market and U.S. sales and absent any information that a particular market situation in the exporting country did not permit a proper comparison, we determined, with the exception of Takeshita Seiko Co., that the quantity of foreign like product sold by all respondents in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the

United States, pursuant to section 773(a) of the Act. Each company's quantity of sales in its home market was greater than five percent of its sales to the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on the prices at which the foreign like product was first sold for consumption in the exporting country in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the EP or CEP sales.

With respect to Takeshita Seiko Co., we found that, because Takeshita sold only customized bearings, Takeshita's U.S. models of subject merchandise had no identical or similar match in the home market or in a third-country market. Therefore we used the constructed value of the U.S. model as the basis for the normal value.

Due to the extremely large number of transactions that occurred during the period of review and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate normal value in accordance with section 777A of the Act. When a firm had more than 10,000 home-market sales transactions on a country-specific basis, we used sales in sample months that corresponded to the sample weeks that we selected for U.S. CEP sales, sales in a month prior to the period of review, and sales in the month following the period of review. The sample months were February, May, August, September, and November of 2002, and January, April, and May of 2003.

The Department may calculate normal value based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, i.e., sales at arm's-length prices. See 19 CFR 351.403(c). We excluded sales to affiliated customers for consumption in the home market that we determined not to be at arm's-length prices from our analysis. To test whether these sales were made at arm's-length prices, the Department compared the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all rebates, movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with the Department's practice, when the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determined that the sales to the affiliated party were at arm's-length prices. See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002). We included in our calculation of normal value those sales to affiliated parties that were made at arm's-length prices.

Because we disregarded below-cost sales in accordance with section 773(b) of the Act in the last completed review with respect to ball bearings sold by INA/FAG, FAG Italy, Koyo, NTN, NPBS, NSK, NMB/Pelmec, Paul Mueller, SNR, SKF France, SKF Italy, and SKF Germany (see *Ball Bearings and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Review in Part, and Determination Not to Revoke in Part*, 68 FR 35623, 35624 (June 16, 2003)), and with respect to ball bearings sold by Asahi Seiko, Barden/FAG, and Nankai Seiko in their last completed reviews (see *Ball Bearings and Parts Thereof from France, et al; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part,* 67 FR 55780, 55781 (August 30, 2002)), we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of normal value in these reviews may have been made at prices below the cost of production (COP) as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we conducted COP investigations of sales by these firms in the home market.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, the selling, general, and administrative (SG&A) expenses, and all costs and expenses incidental to packing the merchandise. In our COP analysis, we used the home-market sales and COP information provided by each respondent in its questionnaire responses.

After calculating the COP, in accordance with section 773(b)(1) of the Act, we tested whether home-market sales of the foreign like product were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. We compared model-specific COPs to the reported home-market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, when less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. When 20 percent or more of a respondent's sales of a given product during the period of review were at prices less than the COP, we disregarded the below-cost sales because they were made in substantial quantities within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act and because, based on comparisons of prices to weighted-average COPs for the period of review, we determined that these sales were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. See analysis memoranda for Asahi Seiko, Barden/FAG, FAG Italy, INA/FAG, Koyo, Nankai Seiko, NMB/Pelmec, NTN, NPBS, NSK, Paul Mueller, SNR, SKF France, SKF Italy, and SKF Germany, dated February 2, 2004. Based on this test, we disregarded below-cost sales with respect to all of the above-mentioned companies.

We compared U.S. sales with sales of the foreign like product in the home market. We considered all non-identical products within a bearing family to be equally similar. As defined in the questionnaire, a bearing family consists of all bearings which are the foreign like product that are the same in the following physical characteristics: load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, outer diameter, inner diameter, and width.

We received a suggestion from the petitioner to alter our model-match methodology. The petitioner suggested that, instead of averaging the sales of all the models within a family, it would be more accurate to compare sales of the single most similar model in those cases where an identical match cannot be found in the home and U.S. market. Because it is not possible for us to make such a substantial change to our model-match methodology within the statutorily mandated deadlines, we have decided to continue to use the same methodology from past reviews for this period of review. See Memorandum to James J. Jochum from Jeffrey A. May, *Ball Bearings (and Parts Thereof) From France, Germany, Italy, Japan, Singapore, and the United Kingdom - Model-Match Methodology* (December 3, 2003). We have solicited comments and invited rebuttal comments from all interested parties on the proposed change to our model-match methodology (see letters to interested

parties dated December 4, 2003, and January 9, 2004, on file in the CRU). We will then use these comments to identify the physical characteristics that we will require respondents to report in future reviews and develop a new model-match methodology for use in the 2003–2004 reviews.

Home-market prices were based on the packed, ex-factory, or delivered prices to affiliated or unaffiliated purchasers. When applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411 and for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparisons to export price, we made circumstances-of-sale adjustments by deducting home-market direct selling expenses from and adding U.S. direct selling expenses to normal value. For comparisons to CEP, we made circumstances-of-sale adjustments by deducting home-market direct selling expenses from normal value. We also made adjustments, when applicable, for home-market indirect selling expenses to offset U.S. commissions in export-price and CEP calculations.

In accordance with section 773(a)(1)(B)(i) of the Act, we based normal value, to the extent practicable, on sales at the same level of trade as the export price or CEP. If normal value was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with section 773(a)(7)(A) of the Act. See *Level of Trade* section below.

In accordance with section 773(a)(4) of the Act, we used constructed value as the basis for normal value when there were no usable sales of the foreign like product in the comparison market. We calculated constructed value in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, and profit in the calculation of constructed value. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market.

When appropriate, we made adjustments to constructed value in accordance with section 773(a)(8) of the Act, 19 CFR 351.410, and 19 CFR 351.412 for circumstance-of-sale differences and level-of-trade differences. For comparisons to export price, we made circumstance-of-sale adjustments by deducting home-market direct selling expenses from and adding U.S. direct selling expenses to constructed value. For comparisons to CEP, we made circumstance-of-sale adjustments by deducting home-market direct selling expenses from constructed value. We also made adjustments, when applicable, for home-market indirect selling expenses to offset U.S. commissions in export-price and CEP comparisons.

When possible, we calculated constructed value at the same level of trade as the export price or CEP. If constructed value was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with sections 773(a)(7) and (8) of the Act. See *Level of Trade* section below.

Level of Trade

To the extent practicable, we determined normal value for sales at the same level of trade as the U.S. sales (either export price or CEP). When there were no sales at the same level of trade, we compared U.S. sales to home-market sales at a different level of trade. The normal-value level of trade is that of the starting-price sales in the home market. When normal value is based on constructed value, the level of trade is that of the sales from which we derived SG&A and profit.

To determine whether home-market sales are at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales were at a different level of trade from that of a U.S. sale and the difference affected price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison-market sales at the level of trade of the export transaction, we made a level-of-trade adjustment under section 773(a)(7)(A) of the Act. See, *e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997).

For a company-specific description of our level-of-trade analysis for these preliminary results, see Memorandum to Laurie Parkhill from Antifriction Bearings Team Regarding Level of Trade, dated February 2, 2004, on file in the CRU, Room B-099.

Collapsing Decision

As a result of our analysis of INA and FAG's responses to our supplemental questionnaires, we have found that the totality of factual information suggests that it is appropriate to collapse FAG and INA as affiliated producers for the purpose of calculating an antidumping duty margin. See Memorandum to Laurie Parkhill, *Ball Bearings (and Parts Thereof) From Germany-Collapsing Affiliated Producers, FAG Kugelfischer Georg Schafer AG and INA-Schaeffler KG, for Purposes of Calculating a Dumping Margin*, January 29, 2004 (Collapsing Memo).

As we have found before, ''[i]t is the Department's long-standing practice to calculate a separate dumping margin for each manufacturer or exporter investigated.'' *Final Determinations of Sales at Less than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products from Japan*, 58 FR 37154, 37159 (July 9, 1993). Because we calculate margins on a company-specific basis, we must ensure that we review the entire producer or reseller, not merely a part of it. We review the entire entity due to our concerns regarding price and cost manipulation. Because of this concern, we examine the question of whether companies ''constitute separate manufacturers or exporters for purposes of the dumping law.'' *Final Determination of Sales at Less Than Fair Value; Certain Granite Products from Spain*, 53 FR 24335, 24337 (June 28, 1988). When affiliated producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and there is evidence indicating a significant potential for the manipulation of price and production, we ''collapse'' related companies; that is, we treat the companies as one entity for purposes of calculating the dumping margin. See 19 CFR 351.401(f). See also *Nihon Cement Co., Ltd. v. United States*, Slip Op. 93–80 (CIT May 25, 1993). As detailed in our *Collapsing Memo*, we find that such a potential for the manipulation of price and production exists with respect to INA and FAG. Therefore, we have calculated a single margin for this entity.

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the following percentage weighted-average dumping margins on antifriction bearings and

parts thereof for the period May 1, 2002, through April 30, 2003:

FRANCE - BALL BEARINGS

Company	Margin
Ace Bearing and Transmission Service	66.42
Acorn Industrial Service Limited	(1)
Aktif Endustrie Malzemeleri	66.42
Alphateam SPRL	66.42
Australian Bearing Pty Ltd.	66.42
Baltic Bearing Supply	66.42
Bearing and Tool GmbH	66.42
Bearing Discount International GmbH	(1)
Bearing Dynamics	66.42
Bearing Net	(1)
Bearing Sales Corp.	66.42
Budapesti Sved Csapagy Ltd.	66.42
Cantoni and C.S.N.C.	66.42
CCVI Bearing Co.	66.42
DCD Corp.	66.42
Delta Export GmbH	66.42
EuroLatin Ex. Services	66.42
Ever-On Corporation (formerly Taisho Kiko Co.)	(1)
Fair Friend Ent. Co. Ltd.	66.42
Friedrich Picard GmbH	66.42
Frohlich and Dorken GmbH	66.42
Han Sol Tech. Corp/Yoo Shin Co.	66.42
Hayley Import/Export	66.42
Heinz Knust	66.42
Hergenhan GmbH	66.42
Hoens Industrieel BV	66.42
IBD Ltd.	66.42
International Bearing Pte.Ltd.	66.42
Italcuscinetti Group	66.42
Kian Ho Bearings, Ltd.	66.42
KIS Antriebs Technik GmbH	66.42
KSM, Minamiguchi/Bearing Manufacturing Co.	66.42
LTM Industrietechnik	66.42
M. Buchhalter Maschenmode/Hergenhan	66.42
Micaknowledge	66.42
Minetti SpA	66.42
Ming Hing Trading Co.	66.42
Motion Bearing Ptre. Ltd.	66.42
Ringball Corporation	2.94
Rodamietos Rovi	66.42
Roeirasa	66.42
Rolling Bearing Co. Pty Ltd.	(1)
Rovi-Marcay	66.42
Rovi-Valencia	66.42
SKF	5.25
SNR	6.40
Sprint Engineering	(1)
Taninaka Ltd.	66.42
Top G Trading Pte Ltd.	66.42
Weber Kugellager Int.	4.86
Withus Technology Corporation	66.42
Wyko Export	66.42
FRANCE - Spherical Bearings.	
Ringball	(1)
SKF	22.72

GERMANY

Company	Margin
Ace Bearing and Transmission Service	70.41
Acorn Industrial Service Limited	70.41
Aktif Endustrie Malzemeleri	70.41
Alphateam SPRL	70.41
Australian Bearing Pty Ltd.	70.41
Baltic Bearing Supply	70.41
Bearing and Tool GmbH	70.41
Bearing Discount International GmbH	(1)

GERMANY—Continued

Company	Margin
Bearing Dynamics	70.41
Bearing Net	(1)
Bearing Sales Corp.	70.41
Budapesti Sved Csapagy Ltd.	70.41
Cantoni and C.S.N.C.	70.41
CCVI Bearing Co.	70.41
DCD Corp.	70.41
Delta Export GmbH	70.41
EuroLatin Ex. Services	70.41
Ever-On Corporation (formerly Taisho Kiko Co.)	(1)
Fair Friend Ent. Co. Ltd.	70.41
Friedrich Picard GmbH	70.41
Frohlich and Dorken GmbH	70.41
Han Sol Tech. Corp/Yoo Shin Co.	70.41
Hayley Import/Export	70.41
Heinz Knust	70.41
Hergenhan GmbH	70.41
Hoens Industrieel BV	70.41
IBD Ltd.	70.41
INA/FAG	3.00
International Bearing Pte.Ltd.	70.41
Italcuscinetti Group	70.41
Kian Ho Bearings, Ltd.	70.41
KIS Antriebs Technik GmbH	70.41
KSM, Minamiguchi/Bearing Manufacturing Co.	70.41
LTM Industrietechnik	70.41
M. Buchhalter Maschenmode/Hergenhan	70.41
Micaknowledge	70.41
Minetti SpA	70.41
Ming Hing Trading Co.	70.41
Motion Bearing Pte. Ltd.	70.41
Paul Mueller	0.35
Ringball	6.54
Rodamietos Rovi	70.41
Roeirasa	70.41
Rolling Bearing Co. Pty Ltd.	(1)
Rovi-Marcay	70.41
Rovi-Valencia	70.41
SKF	2.49
Sprint Engineering	(1)
Taninaka Ltd.	70.41
Timken	(1)
Top G Trading Pte Ltd.70.41.	
Weber Kugellager Int.	4.01
Withus Technology Corporation	70.41
Wyko Export	70.41

ITALY

Company	Margin
Ace Bearing and Transmission Service	68.29
Acorn Industrial Service Limited	(1)
Aktif Endustrie Malzemeleri	68.29
Alphateam SPRL	68.29
Australian Bearing Pty Ltd.	68.29
Baltic Bearing Supply	68.29
Bearing and Tool GmbH	68.29
Bearing Discount International GmbH	(1)
Bearing Dynamics	68.29
Bearing Net	(1)
Bearing Sales Corp.	68.29
Budapesti Sved Csapagy Ltd.	68.29
Cantoni and C.S.N.C.	68.29
CCVI Bearing Co.	68.29
DCD Corp.	68.29
Delta Export GmbH	68.29
EuroLatin Ex. Services	68.29
Ever-On Corporation (formerly Taisho Kiko Co.)	(1)
FAG	3.50
Fair Friend Ent. Co. Ltd.	68.29

ITALY—Continued

Company	Margin
Friedrich Picard GmbH	68.29
Frohlich and Dorken GmbH	68.29
Han Sol Tech. Corp/Yoo Shin Co.	68.29
Hayley Import/Export	68.29
Heinz Knust	68.29
Hergenhan GmbH	68.29
Hoens Industrieel BV	68.29
IBD Ltd.	68.29
International Bearing Pte.Ltd.	68.29
Italcuscinetti Group	68.29
Kian Ho Bearings, Ltd.	68.29
KIS Antriebs Technik GmbH	68.29
KSM, Minamiguchi/Bearing Manufacturing Co.	68.29
LTM Industrietechnik	68.29
M. Buchhalter Maschenmode/Hergenhan	68.29
Micaknowledge	68.29
Minetti SpA	68.29
Ming Hing Trading Co.	68.29
Motion Bearing Ptre. Ltd.	68.29
Ringball	3.45
Rodamietos Rovi	68.29
Roeirasa	68.29
Rolling Bearing Co. Pty Ltd.	(1)
Rovi-Marcay	68.29
Rovi-Valencia	68.29
SKF	1.40
Sprint Engineering	(1)
Taninaka Ltd.	68.29
Top G Trading Pte Ltd.	68.29
Weber Kugellager Int.	2.78
Withus Technology Corporation	68.29
Wyko Export	68.29

JAPAN

Company	Margin
Asahi Seiko Co. Ltd.	0.23
Koyo Seiko Co., Ltd.	5.49
Nankai Seiko	0.46
NPBS	10.32
NSK	2.46
NTN	2.74
Osaka Pump	1.78
Sapporo	9.05
Takeshita Seiko	2.90

SINGAPORE

Company	Margin
NMB/Pelmec	1.44

UNITED KINGDOM

Company	Margin
Aeroengine Bearings	61.14
Barden/FAG	6.06
SKF	(1)

[1] No shipments or sales subject to this review. Pursuant to 19 CFR 351.213(d)(2), we intend to rescind these reviews at the time of our final results if we continue to find no evidence of sales during the period of review.

Comments

Any interested party may request a hearing within 30 days of the date of publication of this notice. A general-issues hearing, if requested, and any hearings regarding issues related solely to specific countries, if requested, will be held at the main Commerce

Department building at a time and location to be determined.

Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Parties who submit case or rebuttal briefs in these proceedings are requested to submit with each argument (1) a statement of the issue, and (2) a brief summary of the argument with an electronic version included. The Department will notify all parties in each country-specific review as to the applicable briefing schedule.

The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written briefs. The Department will issue final results of these reviews within 120 days of publication of these preliminary results.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an exporter/importer (or customer)-specific assessment rate or value for merchandise subject to these reviews.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the period of review produced by companies included in these preliminary results of reviews for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Notice of Policy Concerning Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Export-Price Sales

With respect to export-price sales, for these preliminary results we divided the total dumping margins (calculated as the difference between normal value and export price) for each exporter's importer/customer by the total number of units the exporter sold to that importer/customer. We will direct CBP to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's entries under the relevant order during the review period.

Constructed Export Price Sales

For CEP sales (sampled and non-sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct the CBP to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. See 19 CFR 351.212(b).

Cash-Deposit Requirements

To calculate the cash-deposit rate for each respondent (*i.e.*, each exporter and/or manufacturer included in these reviews), we divided the total dumping margins for each company by the total net value for that company's sales of merchandise during the review period. In order to derive a single weighted-average margin for each respondent, we weight-averaged the export-price and CEP deposit rates (using the export price and CEP, respectively, as the weighting factors). To accomplish this when we sampled CEP sales, we first calculated the total dumping margins for all CEP sales during the review period by multiplying the sample CEP margins by the ratio of total days in the review period to days in the sample weeks. We then calculated a total net value for all CEP sales during the review period by multiplying the sample CEP total net value by the same ratio. Finally, we divided the combined total dumping margins for both export-price and CEP sales by the combined total value for both export-price and CEP sales to obtain the deposit rate.

Entries of parts incorporated into finished bearings before sales to an unaffiliated customer in the United States will receive the respondent's deposit rate applicable to the order.

Furthermore, the following deposit requirements will be effective upon publication of the notice of final results of administrative reviews for all shipments of antifriction bearings and parts thereof entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash-deposit rates for the reviewed companies will be the rates established in the final results of reviews; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will continue to be the ''All Others'' rate for the relevant order made effective by the final results of review published on July 26, 1993. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729, 39730 (July 26, 1993). For ball bearings from Italy, see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 61 FR 66472, 66521 (December 17, 1996). These rates are the ''All Others'' rates from the relevant less-than-fair-value investigations.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

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

We are issuing and publishing these determinations in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 2, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–2722 Filed 2–6–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Stainless Steel Sheet and Strip in Coils From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of final results and partial rescission of antidumping duty

administrative review of stainless steel sheet and strip in coils from Taiwan.

SUMMARY: On August 6, 2003, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results and partial rescission of its administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Taiwan. *See Stainless Steel Sheet and Strip in Coils From Taiwan: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 68 FR 46582 (August 6, 2003)(*''Preliminary Results*''). This review covers imports of subject merchandise from Tung Mung Development Co. Ltd. (''Tung Mung''), Ta Chen Stainless Pipe Co. Ltd. (''Ta Chen''), Chia Far Industrial Factory Co. Ltd. (''Chia Far''), and Yieh United Steel Company (''YUSCO''). The period of review (''POR'') is July 1, 2001 through June 30, 2002.

Based on our analysis of the comments received, we have made changes in the margin calculations for YUSCO and Chia Far. Therefore, the final results differ from the *Preliminary Results.* The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of the Review.'' In addition, we are rescinding the review with respect to Ta Chen.

EFFECTIVE DATE: February 9, 2004.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita (Ta Chen, Tung Mung); Peter Mueller (YUSCO); Lilit Astvatsatrian (Chia Far); or Bob Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4243, (202) 482–5811, (202) 482–6412 or (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (''the Department'') published its notice of preliminary results of antidumping administrative review of stainless steel sheet and strip in coils (''SSSS'') from Taiwan on August 6, 2003. *See Preliminary Results.*

The merchandise covered by this order is SSSS as described in the ''Scope of the Review'' section of the **Federal Register** notice. The period of review (''POR'') is July 1, 2001 through June 30, 2002.

We received written comments from petitioners on August 8, August 13, August 29, September 24, October 2, October 17, 2003 concerning YUSCO's supplemental questionnaire responses on YUSCO's affiliation. YUSCO submitted supplemental questionnaire responses on August 29, 2003 and September 22, 2003 at the Department's request. We did not receive comments from petitioners or Chia Far concerning Chia Far's responses after the preliminary results of review.

We conducted a verification of the sales information provided by YUSCO from September 22, 2003 through September 30, 2003.

We invited interested parties to comment on our *Preliminary Results.* We received written comments on November 18, 2003, from petitioners [1] addressing our analysis of YUSCO, Tung Mung, Ta Chen, and Chia Far. We received rebuttal briefs from Chia Far on November 2, 2003 and from YUSCO on November 3, 2003 concerning petitioners' comments. On December 9, 2003, the Department determined that YUSCO's September 22, 2003 response was improperly bracketed, and requested YUSCO to resubmit its response. On December 16, 2003, YUSCO re-submitted its September 22, 2003 response with revised bracketing.

Verification

As provided in section 782(i) of the Act, we verified the sales information provided by YUSCO from September 22, 2003 through September 30, 2003, including an examination of relevant sales, cost, and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification reports and are on file in the Central Records Unit (''CRU'') located in room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC.

Scope of the Review

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is classified in the *Harmonized Tariff Schedule of the United States* (HTS) at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81,[2] 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this review are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See*

[1] Allegheny Ludlum, AK Steel Corporation (formerly Armco, Inc.), J&L Speciality Steel, Inc., North American Stainless, Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL–CIO/CLC.

[2] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0018, respectively.

Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this review. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this review. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this review. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [3]

Certain electrical resistance alloy steel is also excluded from the scope of this review. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [4]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this review. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (''UNS'') as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [5]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this review. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[6] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[7]

Rescission of Review

In the *Preliminary Results*, we stated that Ta Chen reported, and the Department confirmed through independent U.S. Customs and Border Protection (''Customs'') data, that it had no shipments of subject merchandise during the POR. *See* Memorandum from Laurel LaCivita to the File, *No Shipment Inquiry for Ta Chen Stainless Steel Pipe Co., Ltd. (''Ta Chen''),* dated July 16, 2003. Since Ta Chen did not report any shipments during the POR, we had no basis for determining a margin. Consequently, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we preliminarily rescinded our review with respect to Ta Chen. Petitioners commented on our preliminary

[3] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[4] ''Gilphy 36'' is a trademark of Imphy, S.A.

[5] ''Durphynox 17'' is a trademark of Imphy, S.A.

[6] This list of uses is illustrative and provided for descriptive purposes only.

[7] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

rescission, contesting our reliance on Ta Chen's certification and upon Custom's expertise in determining there were no shipments of subject merchandise during the POR by Ta Chen. The same arguments raised here by petitioners were expressly rejected by the Court of Appeals of the Federal Circuit (''CAFC'') in *Allegheny Ludlum Corp.* v. *United States, 346 F. 3d 1368* (Oct. 15, 2003) (''*Allegheny II*''), litigation covering the first administrative review of stainless steel plate in coils from Taiwan (''SSPC''), in which Ta Chen claimed and the Customs confirmed, that it had no exports of subject merchandise to the United States. during the POR. Furthermore, the CIT affirmed the Department's rescission in the second administrative review of SSPC from Taiwan as well, providing a detailed analysis as to the reasonableness of the Department's practice. *See Allegheny Ludlum Corp.* v. *United States 240 F. Supp. 2d. 1374* (CIT 2003), (''*Allegheny III*'').

The Department has not received any additional information since the *Preliminary Results* that contradicts the decision made in the *Preliminary Results*. We are, therefore, rescinding the review with respect to Ta Chen. *See* ''Issues and Decision Memorandum'' (''*Decision Memorandum*'') from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, Group III, to James J. Jochum, Assistant Secretary for Import Administration, dated February 2, 2004 (Comment 1). Since Ta Chen did not participate in the original investigation, its cash deposit rate will remain at 12.12 percent, which is the all others rate established in the less than fair value (''LTFV'') investigation.

Total Adverse Facts Available

In our *Preliminary Results,* we explained that Tung Mung did not participate in this review and therefore, we applied an adverse facts available (''AFA'') rate of 21.10 percent to all sales and entries of Tung Mung's subject merchandise during the POR. Petitioners commented on the Department's application of the AFA rate it applied to Tung Mung. Petitioners argued that the Department should apply the 34.95 percent *ad valorem* antidumping rate from the final determination in the original investigation. However, as stated in the *Preliminary Results,* the 34.95 percent rate represents a combined rate applied to a channel-specific transaction in the investigation of this proceeding based on middleman dumping by Ta Chen. We stated that we had no record evidence in this segment of the proceeding that Tung Mung's exports to the United States during the POR involved a middleman, and it would be inappropriate, therefore, to use this middleman-inclusive rate as AFA in this case. Furthermore, the CIT, in *Allegheny III,* rejected these same arguments made by petitioners in litigation covering the second administrative review of SSPC from Taiwan. Just as the Department determined, and the CIT agreed, that a non-middleman AFA rate was appropriate for a nonresponsive respondent in *Allegheny III,* we have determined that the same analysis is appropriate for Tung Mung in this case.

Since the *Preliminary Results,* the Department has not received any additional information on the record that contradicts our finding in the *Preliminary Results. See* ''Issues and Decision Memorandum'' (''*Decision Memorandum*'') from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, Group III, to James J. Jochum, Assistant Secretary for Import Administration, dated February 2, 2004 (Comment 2). As a result, we made no changes to Tung Mung's margin of 21.10 percent for the final results.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (''*Decision Memorandum*'') from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, Group III, to James J. Jochum, Assistant Secretary for Import Administration, dated February 2, 2004, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum,* is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/.* The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Sales Below Cost

We disregarded sales below cost for both YUSCO and Chia Far during the course of this administrative review.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations for YUSCO and Chia Far. The changes to the margin calculations are listed below:

YUSCO

- We disregarded home market sales in the HM4 and HM5 databases, and only used sales included in the HM1, HM2 and HM3 databases in our margin analysis. *See Comment 4.*
- We coded all of YUSCO's sales to a certain reseller in the home market as sales to affiliated parties for the purposes of conducting an arm's length test. *See Comment 5.*
- We deleted the returned sales from the computer sales listing in the home market. *See Comment 6.*
- We revised the financial expense ratio to account for the change in the Department's treatment of foreign exchange gains and losses, and to adjust for certain offsets to its foreign exchange gains and losses. *See Comment 10.*
- We adjusted YUSCO's G&A expense ratio to exclude foreign exchange gains and losses attributable to accounts payable. *See Comment 10.*
- We made changes to the computer program as a result of minor corrections at verification:
- We revised cost of manufacturing and variable cost of manufacturing in the COP, CV and U.S. sales databases to account for certain changes to direct labor made as a result of auditor's adjustments.
- We made changes to credit and ICC ratios in the U.S. and home markets to account for errors in the reported interest rate.
- We revised the commercial invoice date for U.S. sales that were reported in error.

Chia Far

- We recalculated U.S. warranty expense to include all of the appropriate warranty expense recorded as export losses. *See Comment 19.*
- We increased COP for certain expenses recorded in Chia Far's financial statements that are in accord with the GAAP in Taiwan but have been found to be distortive by the Department. *See Comment 22.*
- We decreased COGS by the total value of further processing and packing expenses reported during the POR in order to reflect all the appropriate costs that are included in the cost of manufacturing. *See Comment 23.*
- We revised the financial expense ratio to account for the change in the Department's treatment of foreign exchange gains and losses. *See Comment 24.*
- Additionally, as we explained in Comment 23, we revised the amount of

COGS used as the denominator in the financial expense ratio to exclude packing and further processing costs. *See Comment 24.*

Final Results of Review

We determine that the following percentage margin exists for the period July 1, 2001 through June 30, 2002:

STAINLESS STEEL SHEET AND STRIP IN COILS FROM TAIWAN

Manufacturer/exporter/reseller	Margin (percent)
YUSCO	1.96
Chia Far	0.98
Tung Mung	21.10

The Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with section 351.212(b)(1) of the Department's regulations, we have calculated an exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of these final results of review. We will direct Customs to assess the resulting assessment rates against the entered customs' values for the subject merchandise on each of the importer's/customer's entries during the review period. For duty-assessment purposes, we have calculated importer-specific assessment rates by dividing the dumping margins calculated for each importer by the total entered value of sales for each importer during the period of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of stainless steel sheet and strip in coils from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for YUSCO, Chia Far and Tung Mung will be the rates shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be the ''all others'' rate, which is 12.12 percent.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

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

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 771(i) of the Act.

Dated: February 2, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix I—Issues In The Decision Memorandum

A. Issues With Respect to Tung Mung and Ta Chen

Comment 1: Rescission of Review for Ta Chen
Comment 2: Adverse Facts Available (''AFA'') for Tung Mung

B. Issues With Respect to YUSCO

Comment 3: Affiliation with Yieh Loong Enterprise Company Ltd. (''Yieh Loong'') and China Steel Corporation (''CSC'')
Comment 4: Classification of Home Market Sales
Comment 5: Affiliated Parties in the Home Market
Comment 6: Returned Sales
Comment 7: Affiliation and Collapsing with a Certain Downstream Further Manufacturer
Comment 8: Freight Expense Reported by Affiliated Parties in the Home Market
Comment 9: Cost Reconciliation
Comment 10: Exchange Rate Gains and Losses for Cost of Production (''COP'') and Constructed Value (''CV'')
Comment 11: Total AFA for YUSCO

C. Issues With Respect to Chia Far

Comment 12: Chia Far's Home Market Affiliated Parties
Comment 13: Home Market Date of Sale
Comment 14: Incompleteness of Home Market Database
Comment 15: Classification of Non-Prime Merchandise
Comment 16: Calculation of Early Payment Discounts for Home Market
Comment 17: Foreign Inland Freight in Taiwan for U.S. Sales
Comment 18: Inventory Carrying Costs (''ICC'') Incurred in Taiwan for U.S. Sales
Comment 19: Export Losses for U.S. Sales
Comment 20: Treatment of Shut-Down Costs
Comment 21: Calculation of Fully Yielded Cost
Comment 22: Treatment of Certain Expenses Under the Generally Accounting Principles (''GAAP'') in Taiwan
Comment 23: Calculation of Per-Unit General and Administrative (''G&A'') Expense Ratio
Comment 24: Understatement of Financial Expenses in the COP/CV Response
Comment 25: Total AFA for Chia Far

[FR Doc. 04–2720 Filed 2–6–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-351–833]

Carbon and Certain Alloy Steel Wire Rod from Brazil: Notice of Rescission of Countervailing Duty Administrative Review

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

ACTION: Notice of Rescission of Countervailing Duty Administrative Review.

SUMMARY: In response to a request made on October 31, 2003, by Companhia Siderurgica Belgo Mineira, Belgo Mineira Participacoes Industria e Comercio S.A., and BMP Siderurgica S.A., Brazilian producers/exporters of carbon and certain alloy steel wire rod, the Department of Commerce initiated an administrative review of the countervailing duty order on carbon and certain alloy steel wire rod from Brazil, covering the period August 30, 2002

through December 31, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 68 FR 66799 (November 28, 2003). As a result of a timely withdrawal of the request for review by Companhia Siderurgica Belgo Mineira, Belgo Mineira Participacoes Industria e Comercio S.A., and BMP Siderurgica S.A., we are rescinding this review.

EFFECTIVE DATE: February 9, 2004.

FOR FURTHER INFORMATION CONTACT: Melani Miller, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0116.

SUPPLEMENTARY INFORMATION:

Background

On October 22, 2002, the Department of Commerce (''the Department'') published a countervailing duty order on carbon and certain alloy steel wire rod (''subject merchandise'' or ''wire rod'') from Brazil. *See Notice of Countervailing Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil and Canada*, 67 FR 64871 (October 22, 2002). On October 31, 2003, Companhia Siderurgica Belgo Mineira, Belgo Mineira Participacoes Industria e Comercio S.A., and BMP Siderurgica S.A. (collectively, ''Belgo Mineira''), Brazilian producers/exporters of wire rod, requested an administrative review of the countervailing duty order on wire rod from Brazil covering the period August 30, 2002 through December 31, 2002. In accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the review on November 28, 2003. See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 68 FR 66799 (November 28, 2003). On January 29, 2004, Belgo Mineira withdrew its request for review.

Scope of Review

Imports covered by this review are certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the *Harmonized Tariff Schedule of the United States* (''HTSUS'') definitions for (a) stainless steel; (b) tool steel; c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) ''having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) ''having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of the grade 1080 tire cord quality wire rod and the grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis - that is, the direction of rolling - of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003.

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under review are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Rescission of Review

The Department's regulations at 19 CFR 351.213(d)(1) provide that the Department will rescind an administrative review if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Belgo Mineira withdrew its request for an administrative review on January 29, 2004, which is within the 90-day deadline. No other party requested a review of Belgo Mineira's sales. Therefore, the Department is rescinding this administrative review.

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

This notice is issued and published in accordance with 19 CFR 351.213(d)(4).

Dated: February 3, 2004.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 04–2721 Filed 2–6–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011504A]

Taking and Importing of Marine Mammals

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

ACTION: Notice of affirmative finding renewal.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) renewed the affirmative finding for the Government of Mexico under the Marine Mammal Protection Act (MMPA). This affirmative finding renewal will allow yellowfin tuna harvested in the eastern tropical Pacific Ocean (ETP) in compliance with the International Dolphin Conservation Program (IDCP) by Mexican-flag purse seine vessels or purse seine vessels operating under Mexican jurisdiction to continue to be imported into the United States. The affirmative finding renewal was based on review of documentary evidence submitted by the Government of Mexico and obtained from the Inter-American Tropical Tuna Commission (IATTC) and the Department of State.

DATES: Effective April 1, 2003, through March 31, 2004.

FOR FURTHER INFORMATION CONTACT: Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, California, 90802–4213; Phone 562–980–4000; Fax 562–980–4018.

SUPPLEMENTARY INFORMATION: The MMPA, 16 U.S.C. 1361 *et seq.*, as amended by the International Dolphin Conservation Program Act (IDCPA) (Public Law 105–42), allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation, the IATTC, or the Department of State. A finding will remain valid for 1 year (April 1 through March 31) or for such other period as the Assistant Administrator may determine. An affirmative finding applies to yellowfin tuna and tuna products that were harvested in the ETP by purse seine vessels under the jurisdiction of the nation after March 3, 1999, the effective date of the IDCPA.

The affirmative finding process requires that the harvesting nation meet several conditions related to compliance with the IDCP. Every 5 years, the government of the harvesting nation must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator. A nation may provide information regarding compliance with the IDCP directly to NMFS on an annual basis or may authorize the IATTC to release the information to NMFS in years when NMFS will review and consider whether to issue an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f) are no longer being met or that a nation is consistently failing to take enforcement actions on violations, thereby diminishing the effectiveness of the IDCP. Every 5 years, the government of the harvesting nation must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator.

As a part of the annual review process set forth in 50 CFR 216.24(f), the Assistant Administrator considered documentary evidence submitted by the Government of Mexico or obtained from the IATTC and the Department of State and determined that Mexico has met the MMPA's requirements to receive an affirmative finding.

After consultation with the Department of State, NMFS renewed the Government of Mexico's affirmative finding allowing the continued importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested in the ETP after March 3, 1999, by Mexican-flag purse seine vessels or purse seine vessels operating under Mexican jurisdiction.

In 2004, the Assistant Administrator will determine whether the Government of Mexico is meeting the requirements under section 101 (a)(2)(B) and (C) of the MMPA. If necessary, documentary evidence may also be requested from the Government of Mexico to determine whether the affirmative finding criteria are being met. In order for the affirmative finding for the Government of Mexico to be renewed after NMFS's annual review in 2004, the Government of Mexico must submit a new application in early 2005 for an affirmative finding to be effective for the period April 1, 2005, through March 31, 2006, and the subsequent 4 years.

Dated: February 3, 2004.

Wanda L. Cain,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–2716 Filed 2–6–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by March 10, 2004.

Title, Form, and OMB Number: Civil Aircraft Landing Permit System; OBM Number 0701–0050.

Type of Request: Extension of a Currently Approved Collection.

Number of Respondents: 3,600.
Responses Per Respondent: 1.
Annual Responses: 3,600.
Average Burden Per Response: 30 minutes.
Annual Burden Hours: 1,800.
Needs and Uses: This information collection is necessary to ensure that the security and operational integrity of military airfields are maintained; to identify the aircraft operator and the aircraft to be operated; to avoid competition with the private sector by establishing the purpose for use of military airfields; and to ensure the U.S. Government is not held liable if the civil aircraft becomes involved in an accident or incident while using military airfields, facilities, and services.
Affected Public: Business or Other For Profit.
Frequency: On Occasion.
Respondent's Obligation: Required to Obtain or Retain Benefits.
OMB Desk Officer: Ms. Jacqueline Zeiher.
Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.
DoD Clearance Officer: Ms. Jacqueline Davis.
Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: February 2, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–2699 Filed 2–6–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on High Performance Microchip Supply will meet in closed session on March 3, 2004, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will assess the implications of the movement of manufacturing capability and design of high performance microchips and will address the Department of Defense's (DoD) ability to obtain radiation hardened microchips, the ability to produce limited quantities of special purpose microchips in a timely and secure manner, and the ability to produce microchips in a timely manner to meet emerging needs.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. Specifically, the Task Force will look at root causes associated with the migration of the manufacturing capability of high performance semiconductors; policies or technology investments that DoD, either alone or in conjunction with other U.S. government agencies, can pursue which will influence the migration of manufacturing to foreign shores; alternatives to the creation of trusted foundries based on U.S. territory; whether testing is a viable alternative and if so, the level of assurance testing will provide to guarantee that only intended functions are built into the microchip; alternative manufacturing techniques which may allow overseas fabrication of the microchips and subsequent interconnect in the U.S.; and future technologies which the U.S. may invest in to replace the current microchip technology.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

Dated: February 3, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–2698 Filed 2–6–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Identification Technologies will meet in closed session on March 15–16, 2004; April 15–16, 2004; and May 5–6, 2004, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will assess current technologies and operational concepts to identify and track individuals and materiel.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. In this assessment, the task force's investigation will encompass defense, intelligence, and commercial systems, including compartmented technology in development and promising technologies in the lab that are not yet deployed. Technologies will include passive/active, line of sight/non-line of sight, and cooperative/non-cooperative. Potential mechanisms include predictive behavior modeling based on threat characteristics (attack modality, ideological makeup, social, ethnic, religious and political tendencies, etc.), identification technologies such as biometrics (iris scans, facial features, voice prints, etc.), DNA matching, and advanced non-identification technologies such as EO, RF, hyperspectral, and fluid surface assembly (FSA) sensors.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

Dated: February 3, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–2700 Filed 2–6–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Aerial Refueling Requirements will meet in closed session on February 17–18, 2004; March 9–10, 2004; and April 6–7, 2004, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will evaluate current aerial refueling capability and future Department of Defense (DoD) aerial

refueling requirements. The Task Force will assess current and future requirements with respect to both legacy systems and missions, and take into account proposed future systems and capabilities.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. Specifically, using best estimates of requirements for 2010, 2020, and 2030, the Task Force will assess the following options with respect to DoD aerial refueling capability: (1) Retain the requisite number of assets to maintain current capability; (2) perform service life extension on the requisite number of existing aircraft; (3) acquire new refueling capabilities; and (4) evaluate other methods to address refueling needs.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

Due to critical mission requirements and the short timeframe to accomplish this review, there is insufficient time to provide timely notice required by section 10(a)(2) of the Federal Advisory Committee Act and subsection 101–6.1015(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR part 101–6, which further requires publication at least 15 calendar days prior to the first meeting of the Task Force on Aerial Refueling Requirements.

Dated: February 3, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–2701 Filed 2–6–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel; Correction

AGENCY: Department of the Navy, DOD.

ACTION: Notice of closed meeting; correction.

SUMMARY: The Department of the Navy published a document in the **Federal Register** of January 30, 2004, announcing a closed meeting of the CNO Executive Panel. The document contained an incorrect date and time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Christopher Corgnati, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, (703) 681–4909.

Correction

In the **Federal Register** of January 30, 2004, in FR Doc. 04–2048, on page 4498, in the third column, correct the **DATES** caption to read:

DATES: The meeting will be held on Tuesday, February 10, 2004, from 4 p.m. to 4:30 p.m.

Dated: February 4, 2004.

J.T. Baltimore,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 04–2777 Filed 2–6–04; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–59–000, et al.]

Brooklyn Navy Yard Cogeneration, et al.; Electric Rate and Corporate Filings

February 2, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Brooklyn Navy Yard Cogeneration Partners, L.P., Mission Energy New York, Inc., BNY Power Partners LLC

[Docket Nos. EC04–59–000 and ER97–886–007]

Take notice that on January 30, 2004, Brooklyn Navy Yard Cogeneration Partners, L.P. (Brooklyn), Mission Energy New York, Inc. (MENY), and BNY Power Partners LLC (BNYPP) filed an application under Section 203 of the Federal Power Act requesting Commission authorization for the transfer of 50% of the upstream partnership interests in Brooklyn from MENY to BNYPP, an indirect subsidiary of Delta Power Company, LLC, Morgan Stanley Dean Witter Capital Partners IV, L.P., MSDW IV 892 Investors, L.P., and Morgan Stanley Dean Witter Capital Investors IV, L.P. Brooklyn has requested privileged treatment of the contents of Exhibit C–3 and Exhibit I to the section 203 application. In addition, Brooklyn filed a notice of change in status in the above-referenced rate docket.

Comment Date: February 20, 2004.

2. Old Dominion Electric Cooperative

[Docket No. ER97–4314–008]

Take notice that on January 22, 2004, Old Dominion Electric Cooperative, tendered for filing triennial updated market analysis in compliance with the order issued October 17, 1997, 81 FERC 61,044 (1997).

Comment Date: February 12, 2004.

3. California Independent System Operator Corporation

[Docket Nos. ER98–997–003, ER98–1309–002, ER02–2297–002, and ER02–2298–002]

Take notice that on January 20, 2004, the California Independent System Operator Corporation (ISO) submitted a filing to comply with the order issued in the captioned proceedings on August 12, 2003, 104 FERC 61,196.

The ISO states that the compliance filing has been served on the Public Utilities Commission of the State of California and on all parties to these proceedings.

Comment Date: February 10, 2004.

4. Entergy-Koch Trading, LP

[Docket No. ER01–2781–004]

Take notice that on January 26, 2004, EKT Energy Trading, LP (EKT) tendered for filing an updated market power study pursuant to the Commission's Order approving market rate authority for EKT.

Comment Date: February 17, 2004.

5. BOC Energy Services, Inc.

[Docket No. ER03–44–003]

Take notice that on January 20, 2004, BOC Energy Services, Inc. tendered a compliance filing to add a section to its Market Based Rate Schedule incorporating the Market Behavior Rules adopted by the Commission in its Order Amending Market-Based Rate Tariffs and Authorizations issued November 17, 2003 in Docket Nos. EL01–118–000 and EL01–118–001.

BOC Energy Services, Inc. states that the filing also reflects ministerial changes to the Market Based Rate Schedule made to comply with the Commission's tariff formatting requirements.

Comment Date: February 10, 2004.

6. Geyers Power Company, LLC

[Docket No. ER03–184–002]

Take notice that on January 20, 2004, Geysers Power Company, LLC filed a refund report in compliance with the Commission's September 12, 2003 Order. Geysers Power Company, LLC, 104 FERC 61,278 (2003).

Comment Date: February 10, 2004.

7. New York Independent System Operator, Inc.

[Docket No. ER03–690–004]

Take notice that on January 23, 2004, the New York Independent System Operator, Inc. (NYISO) tendered for filing a compliance filing in connection with the Commission(s August 22, 2003, and December 23, 2003, Orders in Docket Nos. ER03–690–000,001 and 002..

The NYISO states that it has served a copy of this filing to all parties listed on the official service list in this proceeding, all parties that have executed Service Agreements under the NYISO(s Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: February 13, 2004.

8. American PowerNet Management, LP

[Docket No. ER03–769–001]

Take notice that on January 20, 2004, American PowerNet Management, LP (APN) tendered a compliance filing to add a section to its Market Based Rate Schedule incorporating the Market Behavior Rules adopted by the Commission in its Order Amending Market-Based Rate Tariffs and Authorizations issued November 17, 2003 in Docket Nos. EL01–118–000 and EL01–118–001.

APN states that the filing also reflects ministerial changes to the Market Based Rate Schedule made to comply with the Commission's tariff formatting requirements.

Comment Date: February 10, 2004.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–1213–001]

Take notice that on January 23, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and section 35.13 of the Commission's regulations, 18 CFR 35.13, submitted for filing a revised Interconnection and Operating Agreement among Traer Municipal Utilities the Midwest ISO, and Interstate Power and Light Company, a wholly-owned subsidiary of Alliant Energy.

Midwest ISO states that a copy of this filing was served on all parties.

Comment Date: February 13, 2004.

10. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–1214–001]

Take notice that on January 26, 2004, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and Section 35.13 of the Commission's regulations, 18 CFR. 35.13 (2002), submitted for filing a revised Interconnection and Operating Agreement among Maquoketa Municipal Utilities and Interstate Power and Light Company, a wholly-owned subsidiary of Alliant Energy.

Midwest ISO states that a copy of this filing was served on all parties.

Comment Date: February 17, 2004.

11. Williams Power Company, Inc.

[Docket No. ER03–1331–002]

Take notice that on January 20, 2004, Williams Power Company, Inc. (WPC) submitted for filing its Sixth Revised FERC Electric Rate Schedule 1 to incorporate the market behavior rules adopted by the Commission in an order issued November 17, 2003 in Docket Nos. EL01–118–000 and 001.

Comment Date: February 10, 2004.

12. Public Service Company of New Hampshire

[Docket No. ER04–130–001]

Take notice that on January 22, 2004, Public Service Company of New Hampshire (PSNH), tendered for filing a substitute sheet containing a modification to the Agreement between PSNH and the Town of Wolfeboro Municipal Electric Department for Interconnection and Delivery Services, as required by the Commission's Order in Docket No. ER04–130–000 issued on December 23, 2004.

PSNH states that a copy of this filing was mailed to the Town of Wolfeboro Municipal Electric Department, the Office of Attorney General for the State of New Hampshire, the Executive Director of the New Hampshire Public Utilities Commission, and the Office of Consumer Advocate for the State of New Hampshire.

Comment Date: February 12, 2004.

13. North Jersey Energy Associates, Limited Partnership

[Docket No. ER04–187–002]

Take notice that on January 27, 2004, North Jersey Energy Associates, A Limited Partnership (NJEA) filed a revised market-based rate tariff to incorporate the Market Behavior Rules established by the Commission in its Order issued on November 17, 2003, in Docket Nos. EL01–118–000 and 001.

Comment Date: February 17, 2004.

14. APN Starfirst, LP

[Docket No. ER04–226–002]

Take notice that on January 20, 2004, APN Starfirst, LP (Starfirst), tendered a compliance filing to add a section to its Market Based Rate Schedule incorporating the Market Behavior Rules adopted by the Commission in its Order Amending Market-Based Rate Tariffs and Authorizations issued November 11, 2003 in Docket Nos. EL01–118–000 and 001.

Starfirst states that the filing also reflects ministerial changes to the Market Based Rate Schedule made to comply with the Commission's tariff formatting requirements.

Comment Date: February 10, 2004.

15. Virginia Electric and Power Company

[Docket No. ER04–271–001]

Take notice that on January 23, 2004, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing a Service Agreement for Network Integration Transmission Service (Retail) by Dominion Virginia Power to Washington Gas Energy Services, Inc., designated as First Revised Service Agreement No. 377, under the Company's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 5.

Dominion Virginia Power renews its request for an effective date of November 9, 2003.

Comment Date: February 13, 2004.

16. Pacific Gas and Electric Company

[Docket No. ER04–337–002]

Take notice that on January 26, 2004, Pacific Gas and Electric Company (PG&E) filed an errata to replace page 6 of the filing letter and two exhibits to its December 24, 2003 filing of Transmission Owner Tariff (TO Tariff) rate for the Transmission Revenue Balancing Account Adjustment (TRBAA), the Reliability Services (TRS) rate, and the Transmission Access Charge Balancing Account Adjustment (TACBAA) also set forth in its TO Tariff.

PG&E states that copies of this filing have been served upon the California Independent System Operator (ISO), Scheduling Coordinators registered with the ISO, Southern California Edison Company, San Diego Gas & Electric Company, the California Public Utilities Commission and other parties to the official service lists in this docket and recent TO Tariff rate cases, FERC Docket Nos. ER01–1639–000, ER03–409–000 and ER04–109–000.

Comment Date: February 17, 2004.

17. Niagara Mohawk Power Corporation

[Docket No. ER04–423–001]

Take notice that on January 20, 2004, Niagara Mohawk Power Corporation

(Niagara Mohawk) filed an amendment to the interconnection service agreement (the agreement) between Niagara Mohawk and Flat Rock Windpower, LLC filed on January 16, 2004.

Comment Date: February 10, 2004.

18. Valley Electric Association, Inc.

[Docket No. ER04–424–001]

Take notice that on January 23, 2004, Valley Electric Association, Inc. tendered for filing an amendment to the Interconnection Agreement filed on January 16, 2004 in Docket No. ER04–424–000.

Comment Date: February 13, 2004.

19. Duke Energy Oakland, LLC

[Docket No. ER04–461–000]

Take notice that on January 22, 2004, Duke Energy Oakland, LLC (DEO) tendered for filing a First Revised Sheet No. 189 to DEO's FERC Electric Rate Schedule No. 2. DEO states that this sheet is filed to amend DEO's contact information included in Schedule J. DEO requests an effective date of January 1, 2004, for this revision.

DEO states that a copy of this filing was served upon the California Independent System Operator Corporation.

Comment Date: February 12, 2004.

20. Duke Energy South Bay, LLC

[Docket No. ER04–462–000]

Take notice that on January 22, 2004, Duke Energy South Bay, LLC (DESB) tendered for filing a First Revised Sheet No. 197 to DESB's FERC Electric Rate Schedule No. 2. DESB states that this sheet is filed to amend DESB's contact information included in Schedule J. DESB requests an effective date of January 1, 2004 for this revision.

DESB states that a copy of this filing was served upon the California Independent System Operator Corporation.

Comment Date: February 12, 2004.

21. Wisconsin Electric Power Company

[Docket No. ER04–470–000]

Take notice that on January 23, 2004, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing a revision to Exhibit B of the Second Revised Power Sales Agreement, Second Revised Rate Schedule FERC No. 90 (Exhibit B) between Wisconsin Electric and Wisconsin Public Power, Inc.

Comment Date: February 13, 2004.

22. Southern Indiana Gas & Electric Company

[Docket No. ER04–471–000]

Take notice that on January 23, 2004, Southern Indiana Gas & Electric Company (SIGECO) tendered for filing: (1) a Tariff for Sales of Ancillary Services (AST) under which SIGECO will provide ancillary services on a basis that is consistent with the requirements of Order No. 888; (2) an unexecuted service agreement (Service Agreement) between SIGECO and the Midwest Independent Transmission System Operator, Inc. under the AST; and (3) Cancellation Documents consisting of notices of cancellation, a revised tariff cover sheet and revised service agreement cover sheets to terminate SIGECO's Open Access Transmission Tariff designated as FERC Electric Tariff, Second Revised Volume No. 3 and all of the service agreements thereunder.

SIGECO respectfully requests waiver of the Commission's regulations to permit the AST, the Service Agreement and the Cancellation Documents to become effective as of March 24, 2004.

SIGECO states that copies of the filing were served upon all customers under the SIGECO's open access transmission tariff and the Indiana Utility Regulatory Commission.

Comment Date: February 13, 2004.

23. Fauquier Landfill Gas, LLC

[Docket No. ER04–472–000]

Take notice that on January 23, 2004, Fauquier Landfill Gas, LLC (Fauquier) submitted for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, an application for authorization to make sales of capacity, energy, and certain Ancillary Services at market-based rates; to reassign transmission capacity; to resell firm transmission rights; to waive certain of the Commission's regulations promulgated under the FPA; and to grant certain blanket approvals under other such regulations.

Comment Date: February 13, 2004.

24. Penobscot Bay Energy Company, L.L.C.

[Docket No. ER04–473–000]

Take notice that on January 23, 2004, Penobscot Bay Energy Company, L.L.C. (Penobscot Bay) pursuant to section 35.15, 18 CFR 35.15, of the Commission's Regulations, filed a Notice of Cancellation of its market-based rate authority under FERC Electric Rate Schedule No. 1.

Comment Date: February 13, 2004.

25. PJM Interconnection, L.L.C.

[Docket No. ER04–474–000]

Take notice that on January 23, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing an unexecuted interconnection service agreement (ISA) among PJM, Industrial Power Generating Corporation, and Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, all doing business as Allegheny Power. PJM requests a January 24, 2004 effective date for the ISA.

PJM states that copies of this filing were served upon the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: February 13, 2004.

26. Black Hills Energy Resources, Inc. (formerly known as Wickford Energy Marketing, LC

[Docket No. ER04–476–000]

Take notice that on January 26, 2004, Black Hills Energy Resources, Inc., tendered for filing a Notice of Cancellation, pursuant to 18 CFR 35.15 (2002), giving notice of cancellation of its market-based electric tariff filed with the Commission.

Comment Date: February 17, 2004.

27. Westar Energy, Inc.

[Docket No. ER04–478–000]

Take notice that on January 26, 2004, Westar Energy, Inc. (Westar), filed (1) a Master Power Purchase Agreement between Westar and the Kansas Electric Power Cooperative, Inc. and (2) a Telemetry Services Agreement and an Energy Coordination Agreement, each between Westar and the Missouri Joint Municipal Electric Utility Commission.

Comment Date: February 17, 2004.

28. Pacific Gas and Electric Company

[Docket Nos. ER04–484–000 and 001]

Take notice that on January 26, 2004, and as amended on January 28, 2004, Pacific Gas and Electric Company (PG&E) filed a Service Agreement for Wholesale Distribution Service and an Interconnection Agreement between PG&E and Hercules Municipal Utility (HMU). PG&E requests an effective date of April 1, 2003.

PG&E states that copies of this filing have been served upon the California Independent System Operator, and the California Public Utilities Commission and HMU.

Comment Date: February 18, 2004.

29. R.E. Ginna Nuclear Power Plant, LLC

[Docket No. ER04–485–000]

Take notice that on January 26, 2004, R.E. Ginna Nuclear Power Plant, LLC submitted for filing, pursuant to section 205 of the Federal Power Act (FPA), and Part 35 of the Commission's Regulations, an application for authorization to make sales of capacity,

energy, and certain Ancillary Services at market-based rates; to reassign transmission capacity; to resell firm transmission rights; to waive certain of the Commission's regulations promulgated under the FPA; and to grant certain blanket approvals under other such regulations.

Comment Date: February 17, 2004.

30. MidAmerican Energy Company

[Docket No. ER04–497–000]

Take notice that on January 20, 2004, MidAmerican Energy Company (MidAmerican), pursuant to the Notice of the Commission Clarifying Compliance Procedures issued January 8, 2004 in Docket Nos. RM02–1–000 and 001, tendered for filing proposed variations in the pro forma Large Generator Interconnection Procedures and Large Generator Interconnection Agreement based on existing regional reliability standards applicable to the Mid-Continent Area Power Pool of which MidAmerican is a member.

Comment Date: February 10, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–217 Filed 2–6–04; 3:00 pm]

BILLING CODE 6717–01–P ?≤

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7619–8]

Integrated Risk Information System (IRIS); Announcement of 2004 Program; Request for Information

AGENCY: Environmental Protection Agency.

ACTION: Notice; announcement of IRIS 2004 program agenda and request for scientific information on human health effects that may result from exposure to chemical substances.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the IRIS 2004 agenda and requesting scientific information on health effects that may result from exposure to the chemical substances for which EPA is starting assessments this year.

The Integrated Risk Information System (IRIS) is an EPA data base that contains the Agency's scientific consensus positions on human health effects that may result from exposure to chemical substances in the environment. On February 5, 2003 (68 FR 5870) and later supplemented on August 13, 2003 (68 FR 48359), EPA announced the 2003 IRIS agenda, with the solicitation of scientific information from the public for consideration in assessing health effects from specific chemical substances. Many of these assessments are on-going or near completion. All assessments completed in FY03 and early FY04 are listed in this notice. This notice also describes some of EPA's efforts to improve the IRIS program.

DATES: Please submit any scientific information in response to this notice in accordance with the instructions provided at the end of this notice by April 9, 2004.

ADDRESSES: Please submit relevant scientific information identified by docket ID number ORD–2003–0016, online at *http://www.epa.gov/edocket* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: For information on the IRIS program, contact Amy Mills, Program Director, National Center for Environmental Assessment, (mail code 8601D), Office of Research and Development, U.S. Environmental Protection Agency, Washington, DC 20460; telephone: (202) 564–3204, facsimile: (202) 565–0075; or e-mail: *mills.amy@epa.gov.*

For general questions about access to IRIS, or the content of IRIS, please call the IRIS Hotline at (202) 566–1676 or send electronic mail inquiries to *hotline.iris@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

IRIS is an EPA data base containing Agency scientific positions on potential adverse human health effects that may result from exposure to chemical substances found in the environment. IRIS currently provides information on health effects associated with more than 500 chemical substances.

The data base includes chemical-specific summaries of qualitative and quantitative health information in support of the first two steps of the risk assessment process, *i.e.,* hazard identification and dose-response evaluation. Combined with specific situational exposure assessment information, the information in IRIS may be used as a source in evaluating potential public health risks from environmental contaminants.

EPA's overall process for developing IRIS assessments consists of: (1) An annual **Federal Register** announcement of EPA's IRIS agenda and call for scientific information from the public on selected chemical substances; (2) a search of the scientific literature; (3) development of IRIS summaries and support documents; (4) agency review; (5) external peer review; (6) management review and approval; (7) entry of IRIS summaries and support documents into the IRIS data base (*http://www.epa.gov/iris*).

The IRIS Annual Agenda

Each year, EPA develops a list of priority chemical substances and an annual agenda for the IRIS program. EPA uses four general criteria to set these priorities: (1) EPA statutory, regulatory, or program-specific implementation needs; (2) availability of new scientific information or methodology that might significantly change the current IRIS information; (3) interest to other levels of government or the public; and (4) availability of other

scientific assessment documents such that only a modest additional effort would be needed to complete the review and documentation for IRIS. The decision to assess any given chemical substance hinges on available Agency resources. Availability of risk assessment guidance, guidelines, and science policy decisions may also have an effect on the timing of EPA's decision to assess a chemical substance.

Consistent with previous **Federal Register** notices announcing the annual IRIS agenda, EPA is soliciting public involvement in new assessments starting in FY 2004. While EPA conducts a thorough literature search for each chemical substance, there may be unpublished studies or other primary technical sources that we may not otherwise obtain through open literature searches. We would appreciate receiving scientific information from the public during the information gathering stage for the list of ''new assessments'' provided in this notice. Interested persons should provide scientific analyses, studies, and other pertinent scientific information. Also note, if you have submitted information previously to the IRIS Submission Desk, there is no need to resubmit that information. While EPA is primarily soliciting information on new 2004 assessments announced in this notice, the public may submit information on any chemical substance at any time.

This notice provides: (1) A list of the IRIS assessments completed in FY 2003 and early FY 2004; (2) a list of the IRIS assessments in progress that the Agency expects to complete in FY 2004–2005; (3) a list of IRIS assessments requiring a more extensive effort; (4) a list of IRIS assessments deleted from the 2003 agenda; (5) a list of new IRIS assessments starting in FY 2004; (6) a new approach to systematically update IRIS; (7) an announcement of improvements underway to the IRIS program; and (8) instructions to the public for submitting scientific information to EPA pertinent to the development of IRIS assessments.

Assessments Completed in Late FY 2003 and Early FY 2004

The following assessments were completed and entered into IRIS in FY 2003 and early FY 2004. These assessments were listed in the **Federal Register** of February 5, 2003 (68 FR 5870). All health endpoints associated with chronic exposure, cancer and noncancer, were assessed unless otherwise noted. Where information was available, both qualitative and quantitative assessments were developed.

Substance name	CAS No.
Acetone	67–64–1
Acrolein	107–02–8
Benzene (noncancer)	71–43–2
1,3-Butadiene	106–99–0
Cyclohexane	110–82–7
Dichloroacetic acid	79–43–6
Diesel engine exhaust	[N.A.]
Hydrogen sulfide	7783–06–4
Methyl ethyl ketone	78–93–3
Methyl isobutyl ketone	108–10–1
2-Methylnaphthalene	91–57–6
Xylenes	1330–20–7

Assessments in Progress

The following assessments are underway or generally complete, and are planned for entry into IRIS in FY 2004 or FY 2005. All health endpoints due to chronic exposure, cancer and noncancer, are being assessed unless otherwise noted. For all endpoints assessed, both qualitative and quantitative assessments are being developed where information is available.

Substance name	CAS No.
Acetaldehyde	75–07–0
Acrylamide	79–06–1
Acrylonitrile	107–13–1
Aldicarb/Aldicarb sulfoxide	116–06–3/1646–87–3
Aldicarb sulfone	1646–88–4
Benzo(a)pyrene	50–32–8
Beryllium (cancer effects)	7440–41–7
Boron	7440–42–8
Bromobenzene	108–86–1
Bromodichloromethane	75–27–4
Bromoform	75–25–2
Cadmium	7440–43–9
Carbon tetrachloride	56–23–5
Chloroethane	75–00–3
Chloroform (inhalation route)	67–66–3
Copper	7440–50–8
Cryptosporidium	[N.A.]
Dibromochloromethane	124–48–1
Dibutyl phthalate	84–74–2
1,2-Dichlorobenzene	95–50–1
1,3-Dichlorobenzene	541–73–1
1,4-Dichlorobenzene	106–46–7
Di(2-ethylhexyl)adipate (DEHA)	103–23–1
Di(2-ethylhexyl)phthalate	117–81–7
Ethanol	64–17–5

Substance name	CAS No.
Ethylbenzene	100–41–4
Ethylene dibromide	106–93–4
Ethylene dichloride	107–06–2
Ethylene glycol monobutyl ether (cancer effects)	111–76–2
Hexachlorobutadiene	87–68–3
n-Hexane	110–54–3
Hydrogen cyanide	74–90–8
Isopropanol	67–63–0
Kepone	143–50–0
Methanol	67–56–1
Methylene chloride (Dichloromethane)	75–09–2
Mirex	2385–85–5
Naphthalene (cancer effects; inh. route)	91–20–3
Nickel (soluble salts)	[N.A.—various]
Nitrobenzene	98–95–3
PAH mixtures	[N.A.—various]
Pentachlorophenol	87–86–5
Perfluorooctanoic acid—ammonium salt	3825–26–1
Perfluorooctane sulfonate—potassium salt	2795–39–3
Phosgene (acute exposure; inhalation route)	75–44–5
Polybrominated diphenyl ethers (PBDEs):	[N.A.—various]
Refractory ceramic fibers	[N.A.]
Styrene	100–42–5
Tetrahydrofuran	109–99–9
Thallium	7440–28–0
Toluene	108–88–3
Trichloroacetic acid	76–03–9
1,1,1-Trichloroethane	71–55–6
1,2,3-Trichloropropane	96–18–4
2,2,4-Trimethylpentane	540–84–1
Uranium (natural)	7440–61–1
Vinyl acetate	108–05–4
Zinc and compounds	7440–66–6

Update of the 2003 IRIS Agenda

EPA has taken active steps to reconsider and update the list of chemical substances on the 2003 IRIS agenda to better reflect the assessments currently underway and corresponding time frames for completion. To that end, EPA has carefully reviewed the chemical assessments on the 2003 agenda and determined that some will need more time for completion due to a higher level of complexity. Highly complex assessments often lead EPA to identify new research needs, apply new methodologies, or conduct multiple, in-depth, high level external scientific peer reviews to ensure the application of sound science. The following chemical assessments will therefore require a more extensive effort.

Substance name	CAS No.
Ammonium Perchlorate (and other perchlorate salts)	7790–98–9
Arsenic, inorganic	7440–38–2
Asbestos (noncancer effects)	1332–21–4
Ethylene oxide (cancer effects)	75–21–8
Formaldehyde	50–00–0
Methyl tert-butyl ether (MTBE)	1634–04–4
Tetrachloroethylene (perchloroethylene)	127–18–4
Polychlorinated biphenyl (PCBs-noncancer endpoints)	1336–36–3
2,3,7,8–TCDD (dioxin)	1746–01–6
Trichloroethylene	79–01–6

In addition, anticipation of new data, emerging methodology, or lack of immediate Agency resources provide the basis for placing the following chemical assessments on a longer time frame for completion. This includes substances denoted with an asterisk (*), which are being evaluated for effects from acute and/or other less-than-lifetime exposure durations. These substances are part of a pilot test to evaluate the application of methods, procedures, and resource needs for adding health effects information for less-than-lifetime exposure duration to IRIS. This effort was announced in the February 5, 2003 (68 FR 5870) **Federal Register**.

Substance name	CAS No.
Acrolein*	107–02–8
Benzene*	71–43–2
Chloroprene	126–99–8
Cobalt	7440–48–4
Dibutyl phthalate*	84–74–2

Substance name	CAS No.
Ethylene oxide*	75–21–8
Hexachloropentadiene*	77–47–4
Hexahydro-1,3,5-trinitro-triazine (RDX)	121–82–4
Hydrogen sulfide*	7783–06–4
Phosgene*	75–44–5
Propionaldehyde	123–38–6
1,1,1-Trichloroethane*	71–55–6

Assessments Deleted From the IRIS Agenda

EPA is deleting from the IRIS agenda a group of pesticides that will not be assessed through the IRIS process. This step is being taken to more efficiently utilize Agency resources, given that the Office of Pesticide Programs (OPP) has a large assessment program evaluating these chemicals. Under the 1996 Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA requests relevant scientific data from pesticide registrants and develops health assessments based on that information. EPA is considering the means for providing electronic public access to pesticide assessments conducted under FIFRA. The following pesticides listed in the February 5, 2003 (68 FR 5870) **Federal Register** are therefore removed from the IRIS agenda for FY2004.

Substance name	CAS No.
Alachlor	15972–60–8
Atrazine	1912–24–9
Azinophos methyl	86–50–0
Bromoxynil	1689–84–5
Captan	133–06–2
Chlorothalonil	1897–45–6
Chlorpyrifos	2921–88–2
Diazinon	333–41–5
Diflubenzuron	35367–38–5
Ethalfluralin	55283–68–6
Ethion	563–12–2
Glyphosate	1071–83–6
Lindane	58–89–9
Methidathion	950–37–8
Methomyl	16752–77–5
Methyl parathion	298–00–0
Metolachlor	51218–45–2
Pebulate	1114–71–2
Pendamethalin	40487–42–1
Propachlor	1918–16–7
Triallate	2303–17–5
Trichlopyr	55335–06–3

In addition to these pesticides, EPA will remove Silica (crystalline) (CAS No. 14808–60–7), and Antimony and compounds (7440–36–0) due to limited EPA resources and lower overall priority at this time.

IRIS summaries and support documents for all substances listed as on-going assessments in FY 2004 will be provided on the IRIS Web site at *http://www.epa.gov/iris* as they are completed. This publicly available Web site is EPA's primary location for IRIS documents. In addition, external peer review drafts of IRIS documents can be found during their peer review periods via the ''What's New'' page of the IRIS Web site. Interested parties should check the ''What's New'' page frequently for the availability of these drafts.

Information Requested on New Assessments for FY 2004

EPA will continue building and updating the IRIS data base. The Agency recognizes that a number of the assessments on IRIS need updating to incorporate new scientific information and methodologies. Further, many additional substances are candidates for adding to IRIS. However, due to limited resources in the Agency to address the spectrum of needs, EPA developed a list of priority substances for attention beginning in FY 2004 based on specific criteria.

EPA developed the list of priority substances for FY 2004 by sorting chemical nominations from the EPA programs and the public according to the following considerations: (1) Multiple nominations were received for a chemical in response to the August 2003 FRN requesting nominations (68 FR 48359); (2) a nomination met multiple criteria among (a) statutory, regulatory or programmatic need, (b) interest to other levels of government or the public, and (c) availability of other assessment documents for use in developing an IRIS assessment. To refine the list of nominations meeting multiple criteria, high priority was given to EPA programs' priority nominations; (3) significant new health effects information is available on which to base an assessment; and (4) Agency resources are available to conduct the assessment. Available health effects information and EPA resources are considered critical for selecting a chemical for assessment. EPA's priority-setting approach for the IRIS agenda was discussed at a public stakeholder workshop, announced in the February 5, 2003 FRN (68 FR 5870) and held on March 4, 2003. The primary recommendation from this workshop was that EPA should be more transparent in explaining why

chemicals are selected for the IRIS agenda by providing a specific rationale for each selection. EPA's rationales are therefore given below.

Based on EPA's prioritization process described above, the following IRIS health assessments have been selected for start up in FY 2004, with completion expected in FY 2006. The Agency is requesting information from the public for consideration in the development of these assessments. For all endpoints assessed, both qualitative and quantitative assessments will be developed where information is available.

Substance name	CAS No.	Reason
1,2-Dichloroethylene	540–59–0	RCRA hazard identification and corrective action need. New scientific information is available to update IRIS.
1,4-Dioxane	123–91–1	CERCLA site cleanup need. New scientific information is available to update IRIS. Public interest.
Ethyl tertiary butyl ether	637–92–3	CAA and SDWA need. Scientific information is available.
Lead (update qualitative discussion)	7349–92–1	CERCLA and RCRA site cleanup need. New scientific information is available to update IRIS. Public interest.

Systematic Update of IRIS Data Base

While the annual prioritization process responds to the needs expressed by IRIS users, EPA is also systematically updating the IRIS data base. The IRIS Program has conducted a screening-level review of the available scientific literature for all chemicals in the IRIS data base. The purpose of EPA's screening level review was to reach preliminary determinations regarding the likelihood that a full reassessment based on an evaluation of new health effects literature could potentially result in significant changes to existing toxicity values or cancer weight-of-evidence designations. The process consisted of a preliminary search and review of the literature through standard toxicological bibliographic data bases (titles and abstracts) and selected literature compilations to identify new major studies that have become available since the existing IRIS assessment was completed. Screening-level reviews were completed for 460 chemicals in the IRIS data base, that is, essentially all chemicals in the data base with the exception of those that are on the current IRIS agenda and are being fully reassessed. For 291 of the 460 chemicals reviewed (about 60%), no major new health effects studies were found that would be likely to significantly change existing toxicity values. These findings have been added to the ''EPA Review and Documentation'' sections of each individual IRIS Summary.

EPA plans to use findings from this literature screen as a basis for systematically updating IRIS by performing a more in-depth review of the extant health data. This more in-depth review will seek to confirm results from the IRIS literature screening review. For those chemicals confirmed to be without new health information to change the existing assessment, EPA will update IRIS summaries to indicate the currency of scientific information upon which the assessment was based.

We are requesting the submission of any scientific information that you would like EPA to consider in confirming the results of the literature screening review. You can locate the screening-level literature review findings for a chemical assessment on the IRIS Web site (*http://www.epa.gov/iris*) by selecting the specific chemical summary of interest and scrolling down to the ''EPA Documentation and Review'' section of the reference dose, reference concentration, and cancer assessments.

Improvements to the IRIS Program

EPA has taken steps to improve the timeliness, quality, transparency, and consistency of IRIS assessments through a series of program reforms. EPA has plans to expand its central IRIS Staff to better manage the program and ensure scientific quality and consistency. In addition, the IRIS program will conduct more of its external scientific peer reviews by panel meetings rather than by mail reviews. This step is being taken to provide the best possible scientific review of each assessment. In addition, panel peer review meetings are open to the public for observation, making the review process more transparent. Further, EPA is now positioning the external peer review step at the end of the IRIS assessment review process, strengthening the role of peer review in informing EPA's final decision-making. Future funding levels, when provided by Congress, may affect actual program implementation and the resulting numbers of assessments completed and/or initiated.

General Information

A. How Can I Get Copies of Related Information?

EPA has established an official public docket for this action under Docket ID No. ORD 2003–0016. The official public docket is the collection of materials that is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

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 submissions, 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 identification number.

It is important to note that EPA's policy is that public submissions, 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 submission contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket

materials through the EPA Docket Center.

B. How and To Whom Do I Submit Scientific Information?

You may submit scientific information as provided in the **ADDRESSES** section. Please submit scientific information within 60 days of this notice, provide all information (studies, reports, articles, *etc.*) you wish to submit. Please ensure that your submissions are submitted within the specified period. Information received after the close of the submission period will be marked ''late.'' Late submissions may be considered if time permits. Your submission should specify the chemical substance to which your information pertains, CASRN (Chemical Abstract Service Registry Number), and the topic or aspect of the assessment that is being addressed (*e.g.*, carcinogenicity, mode of action). In addition, when you submit results of new health effects studies concerning existing substances on IRIS, you should include a specific explanation of how the study results could change the information in IRIS. All citations should be listed in scientific citation format, that is, author(s), title, journal, and date. Include names, addresses and telephone numbers of person(s) to contact for additional information.

If you submit electronic information, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your submission and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the information and allows EPA to contact you in case EPA cannot read your information due to technical difficulties or needs further information on the substance of your submission. Any identifying or contact information provided in the body of submitted information will be included as part of the submission information that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your information due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your information.

Your use of EPA's electronic public docket to submit information to EPA electronically is EPA's preferred method for receiving submissions. The electronic public docket 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 submission. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send e-mail directly to the Docket without going through EPA's electronic public docket, your e-mail address is automatically captured and included as part of the submission that is placed in the official public docket, and made available in EPA's electronic public docket.

You may also request to augment your submission with a scientific briefing to EPA staff. Such requests should be made directly to Amy Mills, IRIS Program Director (*see* For Further Information).

Dated: February 3, 2004.

Peter Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 04–2711 Filed 2–6–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7619–4]

Adoption of the CEC Strategic Plan for North American Cooperation in the Conservation of Biodiversity; Response to Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On March 21, 2003, EPA published a Notice of Availability (68 FR 13930) for review of the final draft of the *Strategic Plan for North American Cooperation in the Conservation of Biodiversity* (Strategic Plan). Final preparation of the Strategic Plan was based on negotiations with counterparts in Canada and Mexico, discussions with representatives of the United States Biodiversity Conservation Working Group (BCWG), the United States BCWG interagency working group, and consideration of comments received under the March 2003 Notice of Availability. The Strategic Plan was adopted by the Commission for Environmental Cooperation's (CEC) Council on June 25, 2003, as specified in CEC Resolution 03–07, under the North American Agreement on Environmental Cooperation. The Strategic Plan will be used to guide the CEC Council, its BCWG, and the CEC Secretariat in their work with stakeholders in cooperatively defining and implementing mutually beneficial biodiversity conservation activities in North America.

This **Federal Register** document provides responses to comments that were received during the comment period for the March 2003 notice of availability. All comments received on the notice of availability were considered by the United States delegation in the development of the final Strategic Plan. However, final negotiations for the Strategic Plan, initiation of a ranking process for priority areas for action listed in the Strategic Plan, and other program commitments caused a delay in publishing the United States government responses.

Responses to Comments: During the comment period on the notice of availability, EPA received 6 comment letters and noted oral comments during a meeting held in Washington, DC on April 3, 2003. The comments covered several categories. The following responses to the comments have been prepared by category:

1. *Compliments and praise for the draft Strategic Plan.* The United States delegation appreciates the support and positive feedback expressed by commenters for the draft Strategic Plan. Resolution 03–07 of the CEC Council also recognized ''* * * the guidance of the Biodiversity Conservation Working Group in the development of the CEC Biodiversity Strategic Plan and the input from governmental and nongovernmental organizations, indigenous and local communities, academia, and the private sector * * *'' in reaching final agreement on the Strategic Plan.

2. *The Strategic Plan should be set forth in an action plan.* Now that the Strategic Plan has been approved by the CEC Council, representatives of Canada, Mexico and the United States will work closely with the CEC Secretariat to develop a 5-year action plan. The action plan will be implemented in the CEC's annual work plan.

3. *Increase the CEC budget to support the Strategic Plan.* The CEC's budget for all programs and administrative activities is limited to the annual contributions agreed by the Parties. Though many commenters as for a budget increase, including representatives of the Trilateral Committee for Wildlife and Ecosystem Conservation and Management in a May 2003 resolution and representatives of the CEC's Biodiversity Conservation Working Group, the Parties will have to work with the CEC Secretariat to determine how project funds are allocated. In Resolution 03–07, the CEC Council directed the Secretariat ''* * * to coordinate and seek partners, additional funds, and diverse input regarding the implementation of the CEC Biodiversity Strategic Plan, keeping

the BCWG informed of developments.'' The United States delegation will work with the other Parties to assist the Secretariat in achieving the CEC Council's directive.

4. *Use existing priority setting systems and greater stakeholder involvement.* The United States delegation has been sensitive to these comments. Incorporation of comments from nongovernmental organizations on the Strategic Plan through the March 2003 notice of availability and coordination with state agencies as direct members of the United States BCWG is a positive step forward in stakeholder involvement. We have increased our efforts to inform tribal governments in the United States and to seek input from nongovernmental organizations to rank the 29 priority areas for action that are listed in the Strategic Plan.

5. *Include a flow diagram of the BCWG's relationship to the CEC management structure in the Strategic Plan.* The United States delegation made this request to the CEC Secretariat. However, the CEC Secretariat was not prepared to provide such a figure in the Strategic Plan because program management changes are planned. An organizational chart is proposed for the CEC's 2004 Operational Plan.

6. *Avoid duplication of management efforts with existing programs and committees.* In May 2003, the BCWG met with the members of the Trilateral Committee for Wildlife and Ecosystem Conservation and Management at their Albuquerque, NM meeting. This meeting was effective in coordinating the activities of these two organizations involved in North American biodiversity issues. The BCWG intends to hold its annual meetings to coincide with future Trilateral Committee meetings, which will facilitate coordination on North American biodiversity issues. The BCWG will also coordinate its activities with other organizations that are concerned with transboundary biodiversity issues. Avoiding duplication of environmental management efforts is essential given the limited resources that the parties have to address continental biodiversity problems.

7. *Elevate the role of States and take advantage of State agency expertise to promote decentralized natural resource management.* One of the cornerstones of the United States BCWG is a representative from a State wildlife management agency. Through our State representative, contact with other State wildlife management agencies is promoted and comments are channeled to the other three Representatives of the BCWG and corresponding Federal agencies. Both State and Federal environmental managers and their personnel, working directly in the field, are a significant resource in the conservation of biodiversity for North America. The United States BCWG appreciates the dedication of State and Federal field personnel to the protection of transboundary and domestic biological resources.

8. *Insert a reference to the International Association of Fish and Wildlife Agencies (IAFWA) in the Strategic Plan.* References to specific organizations, such as the IAFWA, were initially considered in the development of the Strategic Plan. However, the list of agencies grew so large, and there was concern that one or more agencies might be left out inadvertently, that the decision of the parties was to mention agencies and organizations in a generic sense. Therefore, a reference to the IAFWA was not included in the Strategic Plan.

9. *Emphasize the role of private lands in the conservation of biodiversity.* In the discussion about Ecologically Significant Regions, the following statement was added to support the role of private lands in the conservation of biodiversity: ''The three countries recognize that public and private multiple-use and other non-preservation lands can play a variety of roles in conservation of biodiversity.'' This broad statement demonstrates agreement by the Parties that networks of protected areas and private lands are important components in protection of North American biodiversity.

10. *Provide an assessment of wildlife protection legislation and address international agreements and legislation to support biodiversity.* The United States delegation did not request including an assessment of each party's wildlife protection legislation in the Strategic Plan because this CEC's Conservation of Biodiversity Program is an international program under the North American Agreement on Environmental Cooperation (NAACE). Each country is responsible for implementing its own domestic laws and for complying with its commitments under ratified international conventions or agreements for which they are a party. This Strategic Plan is focused on the agreements of the parties under NAACE. An assessment of all wildlife protection legislation and other treaties that address biodiversity was not considered appropriate for this document.

11. *Think continentally or regionally and act locally.* The success of regional conservation efforts is measured by the degree to which the composite of local actions have achieved success. Ideally local and regional objectives support each other. The United States delegation acknowledges the concern that large-scale objectives might miss small-scale detailed priorities. We agree that a suite of approaches and tactics will produce a comprehensive conservation plan. For the CEC Conservation of Biodiversity Program, there is a bias towards regionally shared ecosystems and transboundary species because the CEC program has a large-scale and regional focus. The BCWG is aware of this issue. As the Biodiversity Program is developed, the BCWG will consider environmental management alternatives that address transboundary species and their habitats, as well as sensitive species or ecosystems that may influence the richness of North America's biodiversity.

12. *Specific comments on the CEC's Priority Ecoregion Report.* The United States delegation agrees that there are numerous priority setting processes designed to refine priority areas for conservation. We agree that the CEC Biodiversity Conservation Working Group would do well to consider the contributions made in identifying priority regions by Conservation International, World Wildlife Fund, The Nature Conservancy, and other conservation initiatives. Previous work completed by the CEC was presented in the Strategic Plan to document work accomplished and to provide a baseline. We acknowledge the commenter's concerns regarding specific areas of interest, including the Klamath-Siskiyou forests and watersheds of northern California and southern Oregon. We agree with your comments that ongoing biodiversity surveys and inventories being conducted by leading NGOs should be used by CEC Programs, and we agree that, with scant resources, it makes no sense to repeat any process or study, unless a comparison of the success of a selected management option is the intended result.

Regarding questions about gap analyses, the wording on ER–1 is designed to allow flexibility and broad interpretation to preserve options for future work. Future refinements to priority regions of North America will evaluate the need to include other significant regions. Also, Comments regarding the potential values of connective corridors are acknowledged. The language in the Strategic Plan is general enough to accommodate such, without listing all specifics. Since the U.S. has not signed the Convention on Biological Diversity, directly mirroring the work of the CBD is not a requirement, though it is a

consideration. We feel that the thrust of the Strategic Plan is fully compatible within ecosystem approaches to conservation.

13. *The Strategic Plan should conserve all species, especially threatened resident species, not just migratory or transboundary species, and species with large ranges may tend to be adaptable generalists.* The United States supports collaborative efforts to conserve and restore cross-boundary populations of species, especially species of common conservation concern. Selected marine and terrestrial species of common conservation concern have been identified for conservation activities by the parties. In the future, other species may be added to the lists based on criteria developed by the BCWG and agreed to by the parties. The following tables contain the current lists of the CEC's Species of Common Conservation Concern:

TERRESTRIAL SPECIES OF COMMON CONSERVATION CONCERN

Ferruginous hawk	*Buteo regalis*
Peregrine falcon	*Falco peregrinus*
Loggerhead shrike	*Lanius ludovicianus*
Piping plover	*Charadrius melodus*
Mountain plover	*Charadrius montanus*
Burrowing owl	*Athene cunicularia*
Northern spotted owl	*Strix occidentalis caurina*
Mexican spotted owl	*Strix occidentalis lucida*
Golden-cheeked warbler	*Dendroica chrysoparia*
Whooping crane	*Grus Americana*
California condor	*Gymnogyps californianus*
Black-tailed prairie dog	*Cynomys ludovicianus*
Sonoran pronghorn	*Antilocapra Americana sonoriensis*
Lesser long-nosed bat	*Leptonycteris curasoae*
Mexican long-nosed bat	*Leptonycteris nivalis*
Black bear	*Ursus americanus*
Gray wolf	*Canis lupus*

MARINE SPECIES OF COMMON CONSERVATION CONCERN

Leatherback turtle	*Dermochelys coriacea*
Hawksbill turtle	*Eretmochelys imbricata*
Kemp's ridley turtle	*Lepidochelys kempii*
East Pacific green/black turtle	*Chelonia mydas agassizii*
Loggerhead turtle	*Caretta caretta*
Pink-footed shearwater	*Puffinus creatopus*
Short-tailed albatross	*Phoebastria albatrus*
Xantus's murrelet	*Synthlibiramphus hypoleucus*
North Atlantic right whale	*Eubalaena glacialis*
North Pacific right whale	*Eubalaena japonica*
Gray Whale	*Eschrichtius robustus*
Humpback whale	*Megaptera novaeangliae*
Blue whale	*Balaenoptera musculus*
Killer whale	*Orcinus orca*
Vaquita	*Phocoena sinus*
Guadalupe fur seal	*Arctocephalus townsendi*
Sea otter	*Enhydra lutris*

14. *Support the North American Information Network (NABIN) and better describe its linkages with partners and its complementary role with other networks and databases.* The United States BCWG acknowledges the value of NABIN, and particularly the need for linking it to other networks and clearinghouses. We agree with many commenters regarding the value of working with existing programs such as the Natural Heritage Program, Nature Serve, and ConserveOnline. By building upon existing networks and databases, some of which are quite ambitious, NABIN reduces the potential for redundancy. In response to the request for a description of NABIN in the Strategic Plan, the NABIN Web site URL has been inserted to direct the reader to additional information. In response to a request that all significant NABIN partners be listed, we refrained from such a list, for the same reasons we have avoided similar lists in other contexts. They are dynamic not static, they are rarely comprehensively inclusive, and the requests for additions/insertions never end. While in concept such lists are valuable recognition to key actors and collaborators, in practice they become unmanageable, with only the time of printing providing any static picture.

15. *Trinational development and assessment of scientific data.* The United States BCWG acknowledges encouragement for trinational development and interpretation of scientific data based on actions supported by the Strategic Plan, including joint studies to complement existing data. The latter seems to urge research that generates data complementary to existing data, but also implies cross-border complementarities, which begin with complementary field methods and reporting units. The Strategic Plan mentions this in general terms in the following Priority Area for Action:

ER–4: ''Promote the complementarity of tools, which assess the ecological integrity of habitats and transboundary ecosystems;''

CS–5: ''Promote the establishment of common monitoring parameters and assessment mechanisms for marine, freshwater, and terrestrial populations of regional concern;''

AI–3 ''Contribute to the establishment and strengthening of scientific and technical networks;'' and

RT–3 ''Facilitate the development of regional analyses, transboundary partnerships, actions, and monitoring.''

16. *The Strategic Plan should include evaluation of pesticide effects on biodiversity.* The Responding to Threats (RT) section of the Strategic Plan, in particular RT–3, identifies threats associated with pesticide use as a Priority Area for Action. In addition, cross-program coordination with the CEC's Sound Management of Chemicals (SMOC) program will also aid in evaluating these effects on biodiversity. Such cross-program coordination within the CEC is being discussed as an important management tool and the United States BCWG supports this type of coordination.

17. *The Strategic Plan should include an evaluation of global warming and climate change effects on biodiversity.* United States climate change policy is in the hands of dedicated specialized national negotiating teams outside the scope of our nation's BCWG. More significantly, the CEC budget is not adequate to address the complexity of this topic. Other international fora are more appropriate to address the climate change subject. For example, a task force to the Convention for Biological Diversity is examining the effects of climate change on biodiversity. The United States BCWG recognizes the possible effects that changes in climate might generate, but agreed that this topic should be addressed through other international conventions.

18. *The Strategic Plan should support work on invasive species and link to the CEC's Law and Policy Program.* The United States BCWG acknowledges commenter's appreciation for the inclusion of invasive species in the Strategic Plan. Invasive species will be an important focus for the CEC. We also agree that it is desirable to link management activities to address threats from invasive species through coordination with CEC's other programs.

19. *The Strategic Plan should address loss and degradation of habitat, specifically due to oil and gas development.* The threat of oil and gas development is partly addressed in Priority Area for Action RT–3 (''Facilitate the development of regional analyses, transboundary partnerships, actions, and monitoring that will address the problems caused by the release of substances to land, air and water in North America as they impact important habitats and migratory and transboundary species, and facilitate the development of recovery actions in a collaborative fashion.''). In addition, oil and gas development concerns may also be address under RT–1 (''Support and promote trinational or regional efforts to identify threats facing North American ecosystems, habitats, and species; and establish priorities for responding to these threats.''). The United States BCWG appreciates the commenter's perspective on this topic.

20. *The Strategic Plan neglects agricultural policy and its effects of trade policy.* Given the finite resources and the CEC's fixed budget, it may be desirable to not commit to every complex policy issue available. Agricultural policy, often contentious among governments, even without factoring in environmental aspects, is a complex arena. The CEC may be stretched to address this sensitive and dynamic landscape of issues in which its impact may be constrained. It may be difficult to influence each party's domestic agricultural policy. It may be impossible to alter trinational agricultural policies. However, there is room in the Strategic Plan, and through linkages with other CEC programs to examine agricultural policy effects on the environment. Considerations of agricultural policy potentially fit into the Biodiversity Conservation and Trade goal (BT 1–5). The CEC Environment, Economy, and Trade program, which has invested in analyses of the environmental effects of the trade liberalization, is a logical linkage for this subject.

21. *Analyze the importance of the effects of trade on North American Biodiversity.* The United States BCWG appreciates interest in evaluations of the impacts of Trade on biodiversity. We draw the commenter's attention to CEC's report titled: ''The Environmental Effects of Free Trade,'' *http://cec.org/pubs_docs/scope/index.cfm?varlan=english&ID=14, http://cec.org/files/PDF/ECONOMY/111–03–05_en.pdf.* The CEC has already been working on this issue, albeit in general terms as far as the parameters representing the environment. It is difficult to extract the effects of trade liberalization from multiple alternative social, economic, and environmental factors that also influence biodiversity. Also, biodiversity has not been quantified in adequate detail or scale to allow rigorous regional evaluations, which forces investigators to rely on extremely broad indices. The CEC's Conservation of Biodiversity Program will coordinate closely with the Environment, Economy, and Trade Program to address this multivariate and important topic.

Access to the Document: The Strategic Plan may be viewed on the CEC's Web site at: *http://www.cec.org/programs_projects/conserv_biodiv.* Copies of the Strategic Plan may be obtained by contacting Patrick Cotter via mail at: Office of International Affairs (2260R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via fax at (202) 565–2409; or via e-mail at *Cotter.Patrick@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Patrick Cotter by telephone at (202) 564–6414 or by e-mail at *Cotter.Patrick@epa.gov.*

C. Thomas McCully,

Acting Assistant Administrator for International Affairs.

[FR Doc. 04–2713 Filed 2–6–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7619–6]

Integrating Ecological Risk Assessment and Economic Analysis in Watersheds: a Conceptual Approach and Three Case Studies

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a final report titled, Integrating Ecological Risk Assessment and Economic Analysis in Watersheds: a Conceptual Approach and Three Case Studies (EPA/600/R–03/140R), which was prepared by the U.S. Environmental Protection Agency's (EPA) National Center for Environmental Assessment (NCEA) of the Office of Research and Development (ORD).

ADDRESSES: The document will be made available electronically through the NCEA Web site (*http://www.epa.gov/ncea*). A limited number of paper copies will be available from the EPA's National Service Center for Environmental Publications (NSCEP), PO Box 42419, Cincinnati, OH 45242; telephone: 1–800–490–9198 or 513–489–8190; facsimile: 513–489–8695. Please provide your name, your mailing address, the title and the EPA number of the requested publication.

FOR FURTHER INFORMATION CONTACT: The Technical Information Staff, National Center for Environmental Assessment/Cincinnati Office (MS–117), U.S. Environmental Protection Agency, 26 W. Martin Luther King Drive, Cincinnati, OH 56428; Telephone: 513–

569–7257; fax: 513–569–7475; e-mail: *nceadc.comment@epa.gov.*

SUPPLEMENTARY INFORMATION: This document reports on a program of research to investigate the integration of ecological risk assessment (ERA) and economics, with an emphasis on the watershed as the scale for analysis. In 1993, the U.S. Environmental Protection Agency initiated watershed ERA (W–ERA) in five watersheds to evaluate the feasibility and utility of this approach. In 1999, economic case studies were funded in conjunction with three of those W–ERAs: the Big Darby Creek watershed in central Ohio, the Clinch Valley (Clinch and Powell River watersheds) in southwestern Virginia and northeastern Tennessee, and the central Platte River floodplain in Nebraska. The ecological settings, and the analytical approaches used, differed among the three locations, but each study introduced economists to the ERA process and required the interpretation of ecological risks in economic terms. A workshop was held in Cincinnati, Ohio, in 2001 to review progress on those studies, to discuss environmental problems involving other watershed settings, and to discuss the ideal characteristics of a generalized approach for conducting studies of this type. Based on the workshop results, a conceptual approach for the integration of ERA and economic analysis in watersheds was developed. The objectives of this document (by chapter) are: to set forth the rationale, limitations, and contributions of the document (Chapter 1); to create a context for understanding by a diverse, technical audience (Chapter 2); to present a conceptual approach for integrating ERA and economics in the context of watershed management (Chapter 3); to present and critically evaluate the methods and findings of the three watershed case studies (Chapters 4–6); and to identify research needed to improve the integration of ERA and economic analysis in watersheds (Chapter 7). This report is unique in its focus on the problem of ERA-economic integration and the watershed management context and in its presentation of case studies. The conceptual approach is used as a basis of discussion of each case study to illustrate how its particular methodological advances and insights could be used to fullest advantage, both in the watershed studied and in future integration efforts.

Dated: January 28, 2004.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 04–2714 Filed 2–6–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2004–0072]; FRL–7344–2]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSC, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from December 26, 2003 to January 16, 2004, consists of the PMNs and TME's both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2004–0072 and the specific PMN number or TME number, must be received on or before March 10, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2004–0072. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets.

Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2004–0072. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2004–0072 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2004–0072 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from December 26, 2003 to January 16, 2004, consists of the PMNs and TMEs both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs and TME

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 63 PREMANUFACTURE NOTICES RECEIVED FROM: 12/26/03 TO 01/16/04

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0204	12/29/03	03/27/04	CBI	(G) Resin for spray applied coatings	(G) Olefin-based block copolymer
P–04–0205	12/29/03	03/27/04	CBI	(S) Component in an industrial coating	(S) 1,4-cyclohexanedicarboxylic acid, polymer with 1,6-hexanediol, nonanedioic acid 1,3,5-tris(2-hydroxyethyl)-1,3,5-triazine-2,4,6(1h,3h,5h)-trione
P–04–0206	12/29/03	03/27/04	Gharda chemicals ltd.	(G) Virgin polymer or with various colorants and glass fibers/carbon fibers (fillers/processing aids for applications)	(G) Polyether ether sulfone sulfone
P–04–0207	12/29/03	03/27/04	CBI	(G) Contained use in energy production.	(G) Phosphonate salt
P–04–0208	12/29/03	03/27/04	CBI	(G) Contained use in energy production.	(G) Phosphonate salt
P–04–0209	12/29/03	03/27/04	CBI	(G) Contained use in energy production.	(G) Phosphonate salt
P–04–0210	12/29/03	03/27/04	CBI	(G) Contained use in energy production.	(G) Phosphonate salt
P–04–0211	12/29/03	03/27/04	CBI	(G) Contained use in energy production.	(G) Phosphonate salt
P–04–0212	12/29/03	03/27/04	CBI	(G) Open, non-dispersive uses	(G) Disproportionated rosin esters
P–04–0213	12/29/03	03/27/04	CBI	(G) Surfactant	(G) Perfluoro alkylethyl acrylate copolymer
P–04–0214	12/29/03	03/27/04	CBI	(G) Surfactant	(G) Perfluoro alkylethyl acrylate copolymer
P–04–0215	12/29/03	03/27/04	CBI	(G) Surfactant	(G) Perfluoro alkylethyl acrylate copolymer
P–04–0216	12/31/03	03/29/04	BP Amoco Chemical Company	(S) Ferrous metal corrosion inhibitor in metalworking fluid	(S) Decanoic acid, compound with 2-amino-2-methyl-1-propanol (1:1)
P–04–0217	12/31/03	03/29/04	Bp Amoco Chemical Company	(S) Ferrous metal corrosion inhibitor in metalworking fluid	(S) Dodecanoic acid, compound with 2-amino-2-methyl-1-propanol (1:1)
P–04–0218	12/31/03	03/29/04	BP Amoco Chemical Company	(S) Ferrous metal corrosion inhibitor in metalworking fluid	(S) Isooctadecanoic acid, compound with 2-amino-2-methyl-1-propanol (1:1)
P–04–0219	12/31/03	03/29/04	BP Amoco Chemical Company	(S) Ferrous metal corrosion inhibitor in metalworking fluid	(S) Fatty acids, soya, compounds with 2-amino-2-methyl-1-propanol
P–04–0220	12/31/03	03/29/04	BP Amoco Chemical Company	(S) Ferrous metal corrosion inhibitor in metalworking fluid	(S) Fatty acids, coco, compounds with 2-amino-2-methyl-1-propanol

I. 63 PREMANUFACTURE NOTICES RECEIVED FROM: 12/26/03 TO 01/16/04—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0221	12/31/03	03/29/04	BP Amoco Chemical Company	(S) Ferrous metal corrosion inhibitor in metalworking fluid	(S) Decanedioic acid, compound with 2-amino-2-methyl-1-propanol (1:2)
P–04–0222	12/31/03	03/29/04	BP Amoco Chemical Company	(S) Ferrous metal corrosion inhibitor in metalworking fluid	(S) Nitric acid, reaction products with cyclododecanol and cyclododecanone, by-products from, high-boiling fraction, compounds with 2-amino-2-methyl-1-propanol (1:2)
P–04–0223	12/31/03	03/29/04	BP Amoco Chemical Company	(S) Ferrous metal corrosion inhibitor in metalworking fluid	(S) Dodecanedioic acid, compound with 2-amino-2-methyl-1-propanol (1:2)
P–04–0224	12/31/03	03/29/04	BP Amoco Chemical Company	(S) Ferrous metal corrosion inhibitor in metalworking fluid	(S) Nonanedioic acid, compound with 2-amino-2-methyl-1-propanol (1:2)
P–04–0225	12/31/03	03/29/04	BP Amoco Chemical Company	(S) Ferrous metal corrosion inhibitor in metalworking fluid	(S) Undecanedioic acid, compound with 2-amino-2-methyl-1-propanol (1:2)
P–04–0226	12/31/03	03/29/04	BP Amoco Chemical Company	(S) Ferrous metal corrosion inhibitor in metalworking fluid	(S) Propanoic acid, 2-hydroxy-, compound with 2-amino-2-methyl-1-propanol (1:1)
P–04–0227	12/31/03	03/29/04	BP Amoco Chemical Company	(S) Ferrous metal corrosion inhibitor in metalworking fluid	(S) 1-propanol, 2-amino-2-methyl-, benzoate (salt)
P–04–0228	12/31/03	03/29/04	BP Amoco Chemical Company	(S) Ferrous metal corrosion inhibitor in metalworking fluid	(S) Boric acid (h3b03), compound with 2-amino-2-methyl-1-propanol
P–04–0229	12/31/03	03/29/04	BP Amoco Chemical Company	(S) Ferrous metal corrosion inhibitor in metalworking fluid	(S) Heptanoic acid, compound with 2-amino-2-methyl-1-propanol (1:1)
P–04–0230	12/31/03	03/29/04	BP Amoco Chemical Company	(S) Ferrous metal corrosion inhibitor in metalworking fluid	(S) Octanoic acid, compound with 2-amino-2-methyl-1-propanol (1:1)
P–04–0231	12/31/03	03/29/04	BP Amoco Chemical Company	(S) Ferrous metal corrosion inhibitor in metalworking fluid	(S) Nonanoic acid, compound with 2-amino-2-methyl-1-propanol (1:1)
P–04–0232	12/31/03	03/29/04	BP Amoco Chemical Company	(S) Ferrous metal corrosion inhibitor in metalworking fluid	(S) Hexanoic acid, 2-ethyl-, compound with 2-amino-2-methyl-1-propanol (1:1)
P–04–0233	12/31/03	03/29/04	BP Amoco Chemical Company	(S) Ferrous metal corrosion inhibitor in metalworking fluid	(S) Isononanoic acid, compound with 2-amino-2-methyl-1-propanol (1:1)
P–04–0234	12/31/03	03/29/04	BP Amoco Chemical Company	(S) Ferrous metal corrosion inhibitor in metalworking fluid	(S) Neodecanoic acid, compound with 2-amino-2-methyl-1-propanol (1:1)
P–04–0236	01/06/04	04/04/04	H.B. Fuller	(S) Polymer for fiberglassing binder	(G) Polyacrylic resin
P–04–0237	01/06/04	04/04/04	Houghton International, Inc.	(S) Lubricant additive	(G) Alkanolamine carboxylate salt, alkoxylated amine carboxylate salt
P–04–0238	01/06/04	04/04/04	Houghton International, Inc.	(S) Lubricant additive	(G) Alkanolamine carboxylate salt, alkoxylated amine carboxylate salt
P–04–0239	01/06/04	04/04/04	Houghton International, Inc.	(S) Lubricant additive	(G) Alkanolamine carboxylate salt, alkoxylated amine carboxylate salt
P–04–0240	01/06/04	04/04/04	Houghton International, Inc.	(S) Lubricant additive	(G)Alkanolamine carboxylate salt, Alkoxylated amine carboxylate salt
P–04–0241	01/06/04	04/04/04	Houghton International, Inc.	(S) Lubricant additive	(G) Alkanolamine carboxylate salt, Alkoxylated amine carboxylate salt
P–04–0242	01/06/04	04/04/04	Houghton International, Inc.	(S) Lubricant additive	(G) Alkanolamine carboxylate salt, Alkoxylated amine carboxylate salt
P–04–0243	01/06/04	04/04/04	Werk-AM Co., LTD	(G) Developer Chemical	(G) Hydroxy-arylsulphone
P–04–0244	12/31/03	03/29/04	Great Lakes Chemical	(S) Chemical intermediate	(S) Ethane, 2-bromo-1,1-difluoro-
P–04–0245	01/07/04	04/05/04	CBI	(G) Polymeric admixture for cements	(G) Polycarboxylate polymer with alkenyloxyalkylol modified poly(oxyalkylenediyl), potassium sodium salt
P–04–0246	01/07/04	04/05/04	CBI	(G) Polymeric admixture for cements	(G) Polycarboxylate polymer with alkenyloxyalkylol modified poly(oxyalkylenediyl), potassium sodium salt
P–04–0247	01/07/04	04/05/04	CBI	(S) Fertilizer for turf and crops	(S) Oils, sargassum thunbergii
P–04–0248	01/07/04	04/05/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0249	01/07/04	04/05/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0250	01/07/04	04/05/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin

I. 63 PREMANUFACTURE NOTICES RECEIVED FROM: 12/26/03 TO 01/16/04—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0251	01/07/04	04/05/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0252	01/07/04	04/05/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0253	01/07/04	04/05/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0254	01/08/04	04/06/04	CBI	(G) Coating additive	(G) Mixed metal complex
P–04–0255	01/12/04	04/10/04	CBI	(S) Coil coatings	(G) Polymer of aliphatic/aromtic polycarboxylic acids and aliphatic polyols
P–04–0256	01/12/04	04/10/04	CBI	(S) Adhesives; coatings	(G) Polybutadiene prepolymer
P–04–0257	01/12/04	04/10/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0258	01/12/04	04/10/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0259	01/12/04	04/10/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0260	01/12/04	04/10/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0261	01/12/04	04/10/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0262	01/12/04	04/10/04	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0263	01/13/04	04/11/04	CBI	(S) Coil coating	(G) Polymer of cycloaliphatic polycarboxylic acid and aliphatic polyol
P–04–0264	01/13/04	04/11/04	CBI	(G) Lubricating agent (lubricant)	(G) Thiophenol mix
P–04–0265	01/13/04	04/11/04	CIBA Specialty Chemicals Corporation, Textile Effects	(S) A component in oil, water, and soil repellent finish of fabrics of all fibers	(G) Substituted alkyl diol polymer with substituted alkyloxime and substituted cycloalkane and unsaturated alcohols
P–04–0266	01/14/04	04/12/04	AOC L.L.C.	(S) Polymer component for laminating of fiberglass reinforced plastic parts	(S) 1,3-isobenzofurandione, polymer with 1,2-ethanediol, 2,5-furandione, 2,2'-oxybis[ethanol] and 1,2-propanediol, 3a,4,5,6,7,7a-hexahydro-4,7-methano-1h-inden-5(or 6)-yl ester
P–04–0267	01/15/04	04/13/04	CBI	(S) Laminating adhesive	(G) Aromatic polyether polyester polyurethane

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 2 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 12/26/03 TO 01/16/04

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–04–0001	12/30/03	02/12/04	CBI	(G) Polyurethane's market	(G) Soy polyol

II. 2 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 12/26/03 TO 01/16/04—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–04–0002	01/12/04	02/25/04	Ilford Imaging USA	(S) Dye formulated in water-based ink for use in inkjet printer cartridges.	(S) 1h-pyrazole-3-carboxlic acid, 4-[[5-[[4,6-bis[(3-sulfopropyl)thio]-1,3,5-triazin-2-yl]amino]-2-sulfophenyl]azo]-1-(2,5-dichloro-4-sulfophenyl)-4,5-dihydro-5-oxo-, pentasodium salt

In Table III of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 17 NOTICES OF COMMENCEMENT FROM: 12/26/03 TO 01/16/04

Case No.	Received Date	Commencement Notice End Date	Chemical
P–01–0247	01/07/04	11/18/03	(G) Reaction product of aliphatic amines with fatty acids, phthalic anhydride and epoxide oligomers
P–02–0983	12/29/03	12/01/03	(G) Substituted-alkyl-heteromonocycle
P–02–1041	12/29/03	12/21/03	(G) Isocyanate functional polyester polyether urethane polymer
P–03–0104	01/13/04	12/08/03	(G) Tristyryl phenol alkoxylate salt
P–03–0108	01/06/04	12/12/03	(G) Substituted cyan acetic acid pentyl ester
P–03–0357	01/07/04	12/08/03	(G) Transition metal complex
P–03–0587	01/05/04	11/17/03	(S) Propanoic acid, 2-hydroxy-,(2r)-
P–03–0598	01/15/04	12/29/03	(G) Sulfurized vegetable oil
P–03–0599	01/15/04	12/29/03	(G) Sulfurized vegetable oil
P–03–0618	01/12/04	12/10/03	(G) Silsesquioxane
P–03–0653	01/12/04	12/09/03	(G) Polycarboxylate polymer with alkenylsubstituted carbomonocycle, modified with poly(oxyalkylenediyl) and polymer of heteromonocycle and alkylheteromonocycle monoalkyl ether, sodium salt
P–03–0770	01/13/04	12/30/03	(G) Hydrophobically modified hydroethylcellulose
P–03–0787	01/12/04	12/09/03	(S) 13-docosenoic acid, potassium salt, (13z)-
P–03–0788	12/29/03	12/01/03	(S) Docosanoic acid, potassium salt
P–03–0833	01/07/04	12/15/03	(G) Di-substituted stilbenedisulfonic acid salt
P–03–0834	01/07/04	12/12/03	(G) Derivative of a disubstituted phenylenediamine
P–99–0920	12/29/03	12/11/03	(S) Poly(oxy-1,2-ethanediyl), alpha-(9z)-9-octadecenyl-omega-hydroxy-, phosphate, ammonium salt

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: January 29, 2004.

Anthony Cheatham,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 04–2709 Filed 2–6–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7619–7]

Clean Water Act Section 303(d): Availability of 4 Total Maximum Daily Loads (TMDL)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for comment of the administrative record files for 4 TMDLs and the calculations for these TMDLs prepared by EPA Region 6 for waters listed in the Barataria river basin, under section 303(d) of the Clean Water Act (CWA). These TMDLs were completed in response to a court order in the lawsuit styled *Sierra Club, et al.* v. *Clifford, et al.*, No. 96–0527, (E.D. La.).

DATES: Comments must be submitted in writing to EPA on or before March 10, 2004.

ADDRESSES: Comments on the 4 TMDLs should be sent to Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733 or e-mail: *caldwell.ellen@epa.gov*. For further information, contact Ellen Caldwell at (214) 665–7513. The administrative record files for the 4 TMDLs are available for public inspection at this address as well. Documents from the administrative record files may be viewed at *http://www.epa.gov/region6/water/tmdl.htm,* or obtained by calling or writing Ms. Caldwell at the above address. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the EPA, styled *Sierra Club, et al.* v. *Clifford, et al.*, No. 96–0527, (E.D. La.). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner.

EPA Seeks Comment on 4 TMDLs

By this notice EPA is seeking comment on the following 4 TMDLs for

waters located within the Barataria river basin:

Subsegment	Waterbody name	Pollutant
020401	Bayou Lafourche—Donaldsonville to Intracoastal Waterway at Larose	Dissolved Oxygen.
020401	Bayou Lafourche—Donaldsonville to Intracoastal Waterway at Larose	Nutrients.
020401	Bayou Lafourche—Donaldsonville to Intracoastal Waterway at Larose	Fecal Coliform.
020701	Bayou Segnette—origin to Bayou Villars	Fecal Coliform.

EPA requests that the public provide any water quality related data and information that may be relevant to the calculations for 4 TMDLs. EPA will review all data and information submitted during the public comment period and revise the TMDL where appropriate. EPA will then forward the TMDLs to the Louisiana Department of Environmental Quality (LDEQ). The LDEQ will incorporate the TMDLs into its current water quality management plan.

Dated: February 2, 2004.

Miguel I. Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. 04–2712 Filed 2–6–04; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act; Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on February 10, 2004, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- January 8, 2004 (Open and Closed)

B. Reports

- Bovine Spongiform Encephalopathy (BSE) Update
- Preferred Stock Informational Memorandum
- Syndications—OGC Legal Opinion

C. New Business—Other

- Webcast of FCA Public Meetings
- EEO Director Position
- Consolidation of FCA Training Programs
- Distressed Loan Restructuring—Final Rule
- Privacy Act—Routine Uses

Closed Session*

Reports

- East Carolina Preferred Stock Issuance Request

Dated: February 4, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 04–2800 Filed 2–5–04; 11:20 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 04–260]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

AGENCY: Federal Communications Commission.

ACTION: Notice of extension of time.

SUMMARY: The Commission has extended the deadline to file oppositions to the Petitions for Reconsideration and Clarification filed in *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices and Compatibility Between Cable Systems and Consumer Electronics Equipment,* CS Docket No. 97–80 and PP Docket No. 00–67 and *Digital Broadcast Content Protection,* MB Docket No. 02–230 to March 10, 2004.

DATES: Oppositions due March 10, 2004; replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

FOR FURTHER INFORMATION CONTACT: Susan Mort, (202) 418–1043.

SUPPLEMENTARY INFORMATION: By a document previously published in the **Federal Register**, 69 FR 3361, January 23, 2004, the Commission established February 9, 2004 as the deadline to file oppositions to the Petitions for Reconsideration and Clarification filed in *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices and Compatibility Between Cable Systems and Consumer Electronics Equipment,* CS Docket No. 97–80 and PP Docket No. 00–67 and *Digital Broadcast Content Protection,* MB Docket No. 02–230. By Order, DA 04–260, February 2, 2004, the Commission has extended this deadline to March 10, 2004.

Federal Communications Commission.

William Johnson,

Deputy Chief, Media Bureau.

[FR Doc. 04–2731 Filed 2–6–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing an Open Meeting of the Board of Directors

TIME AND DATE: The meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, February 11, 2004.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: The entire meeting will be open to the public.

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

MATTERS TO BE CONSIDERED: *Strategic Plan 2003—2008.* Consideration of a strategic plan for the agency covering the period from 2003 through 2008.

Legal Authority to Require Registration of Federal Home Loan Bank Securities Under the Securities Exchange Act of 1934. Consideration of a resolution directing the Chairman to request that the Office of Legal Counsel of the Department of Justice determine whether the agency has the authority under the Federal Home Loan Bank Act to require each Federal Home Loan Bank to register a class of its equity securities with the Securities and Exchange Commission under the provisions of section 12(g) of the Securities Exchange Act of 1934.

CONTACT PERSON FOR MORE INFORMATION: Mary Gottlieb, Paralegal Specialist, Office of General Counsel, by telephone at 202/408–2826 or by electronic mail at gottliebm@fhfb.gov.

Dated: February 4, 2004.

By the Federal Housing Finance Board.

John Harry Jorgenson,

General Counsel.

[FR Doc. 04–2888 Filed 2–5–04; 3:12 pm]

BILLING CODE 6725–01–U

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Notice; Announcing the Continuation of a Public Hearing on Corporate Governance of the Federal Home Loan Banks

TIME AND DATE: The continuation of the public hearing held on January 23, 2004, is scheduled to begin at 10 a.m. on Tuesday, February 10, 2004.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: The entire hearing will be open to the public.

MATTERS TO BE CONSIDERED: Corporate Governance of the Federal Home Loan Banks:

The purpose of the hearing is to solicit proposals for both statutory and regulatory reform aimed at enhancing Federal Home Loan Bank governance.

CONTACT PERSONS: For general information contact Mary H. Gottlieb, Paralegal Specialist, Office of General Counsel, by telephone at 202/408–2826 or by electronic mail at *gottliebm@fhfb.gov.* Submit requests to testify and copies of testimony to Thomas D. Casey, Chief Counsel to the Chairman, by telephone at 202/408–2957 or by electronic mail at *caseyt@fhfb.gov.*

Dated: February 4, 2004.

By the Federal Housing Finance Board.

John Harry Jorgenson,

General Counsel.

[FR Doc. 04–2887 Filed 2–5–04; 3:12 pm]

BILLING CODE 6725–01–U

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposal.

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collections, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before April 9, 2004.

ADDRESSES: Comments should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Please consider submitting your comments through the Board's web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm;* by e-mail to *regs.comments@federalreserve.gov;* or by fax to the Office of the Secretary at 202/452–3819 or 202/452–3102. Rules proposed by the Board and other federal agencies may also be viewed and commented on at *www.regulations.gov.* All public comments are available from the Board's web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (C and 20th Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed forms and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statements, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Cindy Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following reports:

1. Report title: Survey to Obtain Information on the Relevant Market in Individual Merger Cases
Agency form number: FR 2060
OMB control number: 7100–0232
Frequency: On occasion
Reporters: Small businesses and consumers
Annual reporting hours: 18
Estimated average hours per response: 10 minutes for small businesses, 6 minutes for consumers
Number of respondents: 25 small businesses and 50 consumers per survey
General description of report: This information collection is voluntary (12 U.S.C. § 1817(j), 1828(c), and 1841 et seq.) and is given confidential treatment (5 U.S.C. §§ 552 (b)(4) and (b)(6)).
Abstract: The Federal Reserve uses this information to define relevant banking markets for specific merger and acquisition applications and to evaluate changes in competition that would result from proposed transactions.

2. Report title: Written Security Program for State Member Banks
Agency form number: FR 4004
OMB control number: 7100–0112
Frequency: On occasion
Reporters: State member banks
Annual reporting hours: 27
Estimated average hours per response: 30 minutes
Number of respondents: 54
General description of report: This recordkeeping requirement is mandatory [12 U.S.C. § 1882], 12 U.S.C. § 248(a)(1) and 325, and Regulation H [12 C.F.R., part 208.61] authorize the Board to require the recordkeeping of this information. Because written security programs are maintained at state member banks, no issue of confidentiality under the Freedom of Information Act normally arises. However, copies of such documents included in examination work papers would, in such form, be confidential pursuant to exemption 8 of the Freedom of Information Act (5 U.S.C. § 552(b)(8)).
Abstract: This mandatory information collection is a recordkeeping requirement contained in the Federal Reserve's Regulation H, Section 208.61. Each state member bank must develop and implement a written security program and maintain it in the bank's records. There is no formal reporting form and the information is not submitted to the Federal Reserve.

3. Report title: Transfer Agent Registration and Amendment Form
Agency form number: FR TA–1
OMB control number: 7100–0099
Frequency: On occasion
Reporters: State member banks and their subsidiaries, bank holding companies, and certain nondeposit trust company subsidiaries of bank holding companies.
Annual reporting hours: 8
Estimated average hours per response: 1 hour and 15 minutes for registrations; 10 minutes for amendments
Number of respondents: 5 registrations and 11 amendments
General description of report: This information collection is mandatory (Sections 17A(c), 17(a), and 23(a) of the Securities Exchange Act of 1934, as amended (15 USC 78q–1(c)(1) and (2), 78q(a)(3), and 78w(a)(1))) and is not given confidential treatment.
Abstract: The Securities Exchange Act of 1934 (the ''Act'') requires any person acting as a transfer agent to register as such and to amend registration information when it changes. State member banks and their subsidiaries, bank holding companies, and certain nondeposit trust company subsidiaries of bank holding companies register with the Federal Reserve System by submitting Form TA–1. The information collected includes the company name, all business addresses, and several questions about the registrant's proposed activities as a transfer agent. The Federal Reserve uses the information to act upon registration applications and to aid in performing its supervisory duties.

Board of Governors of the Federal Reserve System, February 3, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–2660 Filed 2–6–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 23, 2004.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Claire L. Erickson, Hudson, Wisconsin, and Marilyn J. Kron, Hudson, Wisconsin; to acquire voting shares of Waseca Bancshares, Inc., Waseca, Minnesota, and thereby indirectly acquire voting shares of Roundbank, Waseca, Minnesota, and American Savings, Inc., Farmington, Minnesota.

Board of Governors of the Federal Reserve System, February 3, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–2663 Filed 2–6–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications

must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 3, 2004.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. American Bank Incorporated, Allentown, Pennsylvania; to acquire voting shares of PSB Bancorp, Inc., Philadelphia, Pennsylvania, and thereby indirectly acquire voting shares of First Penn Bank, Philadelphia, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Synovus Financial Corp., Columbus, Georgia; to acquire 100 percent of the voting shares of Trust One Bank, Memphis, Tennessee.

C. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Pinehurst Bancorp, Inc., St. Paul, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Pinehurst Bank, St. Paul, Minnesota, a *de novo bank*.

Board of Governors of the Federal Reserve System, February 3, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–2661 Filed 2–6–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 3, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Bancshares of Florida, Inc., Naples, Florida; to acquire Horizon Financial Corp., Pembroke Pines, Florida, and thereby indirectly acquire Horizon Bank, FSB, Pembroke Pines, Florida, and thereby engage in operating a savings and loans association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, February 3, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.04–2662 Filed 2–6–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 9 a.m. (EST), February 17, 2004.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the January 20, 2004, Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director.

Part Closed to the Public

3. Personnel matters.

FOR FURTHER INFORMATION CONTACT: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: February 4, 2004.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 04–2784 Filed 2–5–04; 10:51 am]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Advisory Committee to the Director, Centers for Disease Control and Prevention: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Committee to the Director, Centers for Disease Control and Prevention, of the Department of Health and Human Services, has been renewed for a 2-year period beginning February 1, 2004, through February 1, 2006.

For further information, contact Robert Delaney, Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE., m/s D–14, Atlanta, Georgia 30333. Telephone 404/639–7000, fax 404/639–7111, e-mail: *rdelaney@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 2, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–2671 Filed 2–6–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Clinical Laboratory Improvement Advisory Committee: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Clinical Laboratory Improvement Advisory Committee, of the Centers for Disease Control and Prevention (CDC), of the Department of Health and Human Services, has been renewed for a 2-year period beginning February 19, 2004, through February 19, 2006.

For further information, contact Robert Martin, M.D., Executive Secretary, Clinical Laboratory Improvement Advisory Committee, CDC, 1600 Clifton Road, NE, m/s G–25, Atlanta, Georgia 30333. Telephone (770)

488–8295, fax (770) 488–8282, e-mail: *RMartin1@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 2, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–2677 Filed 2–6–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health, Safety and Occupational Health Study Section

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Times and Dates: 8 a.m.–5 p.m., February 19, 2004; 8 a.m.–5 p.m., February 20, 2004.

Place: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, Virginia, 22314, telephone (703) 684–5900, fax (703) 684–1403.

Status: Open 8 a.m.–8:30 a.m., February 19, 2004; Closed 8:30 a.m.–5 p.m., February 19, 2004; Closed 8 a.m.–5 p.m., February 20, 2004.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health, and allied areas. It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals.

This will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects, which will lead to improvements in the delivery of occupational safety and health services, and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters To Be Discussed: The meeting will convene in open session from 8–8:30 a.m. on February 19, 2004, to address matters related to the conduct of Study Section business. The remainder of the meeting will proceed in closed session. The purpose of the closed sessions is for the study section to consider safety and occupational health-related grant applications. These portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, Centers for Disease Control and Prevention, pursuant to Section 10(d) Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Price Connor, Ph.D., NIOSH Health Scientist, 1600 Clifton Road, NE, Mailstop E–20, Atlanta, Georgia 30333, telephone (404) 498–2511, fax (404) 498–2569.

Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of the meeting.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 3, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–2676 Filed 2–6–04; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–382 and CMS–R–299]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* ESRD Beneficiary Selection and Supporting Regulations in 42 CFR 414.330; *Form No.:* CMS–382 (OMB# 0938–0372); *Use:* ESRD facilities have each new home dialysis patient select one of two methods to handle Medicare reimbursement. The intermediaries pay for the beneficiaries selecting Method I and the carriers pay for the beneficiaries selecting Method II. This system was developed to avoid duplicate billing by both intermediaries and carriers; *Frequency:* Other: One-time Only; *Affected Public:* Individuals or Households, Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 7,400; *Total Annual Responses:* 7,400; *Total Annual Hours:* 617.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* A project to Develop an Outcome-Based Continuous Quality Improvement System and Core Outcome and Comprehensive Assessment Data Set for PACE; *Form No.:* CMS-R–299(OMB# 0938–0791); *Use:* The purpose of this project is to develop an outcome-based continuous quality improvement (OBCQI) system and core comprehensive assessment data set for the PACE program by (a) developing and testing a set of data items for core outcome and comprehensive assessment (COCOA), (b) testing risk-adjustment methods so each site's outcomes can be appropriately evaluated, (c) designing an OBCQI approach to improve quality in a systematic, evolutionary manner, and (d) testing the usefulness of the data items for assessment and care planning. A three-phase field test will result in the refinement of the draft COCOA data items and protocols needed. Findings from the project are intended to guide the possible implementation of a national approach for OBCQI and core comprehensive assessment for PACE.; *Frequency:* On occasion and Semi-annually; *Affected Public:* Individuals or Households and Not-for-profit institutions; *Number of Respondents:* 8,320; *Total Annual Responses:* 116,038; *Total Annual Hours:* 16,960.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 29, 2004.

Melissa Musotto,

Acting, Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–2704 Filed 2–6–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–308]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Instrument/Tool for Refinement of a Prospective Payment System for Patients in Inpatient Psychiatric Hospitals, and units: A pilot test; *Form No.:* CMS–10107 (OMB# 0938–NEW); *Use:* This is a request to pilot test an instrument to refine the PPS for inpatient psychiatric facilities. This testing will include assessing the feasibility of administering this instrument, and testing the reliability, validity, time and process of administration.; *Frequency:* Other: Per stay per diem; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government; *Number of Respondents:* 1,120; *Total Annual Responses:* 1,120; *Total Annual Hours:* 2,464.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* The State Children's Health Insurance Program and Supporting Regulations in 42 CFR 431.636, 457.50, 457.60, 457.70, 457.340, 457.350, 457.431, 457.440, 457.525, 457.560, 457.570, 457.740, 457.750, 457.810, 457.940, 457.945, 457.965, 457.985, 457.1005, 457.1015, and 457.1180; *Form No.:* CMS–R–308 (OMB# 0938–0841); *Use:* States are required to submit title XXI plans and amendments for approval by the Secretary pursuant to section 2102 of the Social Security Act in order to receive funds for initiating and expanding health insurance coverage for uninsured children. States are also required to submit State expenditure and statistical reports, annual reports and State evaluations to the Secretary as outlined in title XXI of the Social Security Act and furnish assorted notices to recipients; *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 88; *Total Annual Responses:* 12,187,482; *Total Annual Hours:* 838,714.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 29, 2004.

Melissa Musotto,

Acting, Paperwork Reduction Act Team Leader, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–2705 Filed 2–6–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0482]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Mammography Facilities, Standards, and Lay Summaries for Patients

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 10, 2004.

ADDRESSES: The Office of Management and Budget (OMB) is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Mammography Facilities, Standards, and Lay Summaries for Patients—21 CFR Part 900 (OMB Control Number 0910–0309)—Extension

Public Law 102–539, the Mammography Quality Standards Act of 1992 (MQSA) (42 U.S.C. 263b) as amended by the Mammography Quality Standards Reauthorization Act (MQSRA) of 1998 (Public Law 105–248) establishes the authority for a Federal certification and inspection program for mammography facilities; regulations and standards for accreditation bodies for mammography facilities; and standards for mammography equipment, personnel, and practices, including quality assurance. MQSRA extended the life of the MQSA program for 4 years from its original expiration date of 1998 until 2002, and also modified some of the provisions. The most significant modification from a report and recordkeeping viewpoint under § 900.12(c)(2) was that mammography facilities were required to send a lay summary of each examination to the patient.

FDA, under this regulation, collects information from accreditation bodies and mammography facilities by requiring each accreditation body to submit an application for approval and to establish a quality assurance program. On the basis of accreditation, facilities are certified by FDA and must prominently display their certificate. FDA uses the information to ensure that private, nonprofit organizations or state agencies meet the standards established by FDA for accreditation bodies to accredit facilities that provide mammography services.

Information collected from mammography facilities has also been used to ensure that the personnel, equipment, and quality systems has and continues to meet the regulations under MQSA and will be used by patients to manage their health care properly. The intent of these regulations is to assure safe, reliable, and accurate mammography on a nationwide level. The most likely respondents to this information collection will be accreditation bodies and mammography facilities seeking certification.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Capital Costs	Total Operating & Maintenance Costs
900.3	1	0.33	0.33	60	20		
900.3(b)(3)	1	0.33	0.33	60	20	$50	
900.3(c)	5	0.33	1.67	15	25		
900.3(e)	1	0.1	0.1	1	0.1		
900.3(f)(2)	1	0.1	0.1	200	20		
900.4(c)&(2)	9,200	0.33	3,067	1	3,067		
900.4(e)	9,450	1	9,450	8	75,600		
900.4(f)	276	1	276	7	1,932		
900.4(h)	5	1	6130	1	6,130		
900.4(i)(2)	1	0.33	0.33	1	0.33		
900.6(c)(1)	1	0.1	0.1	1	0.1		
900.11(b)(1)	9,200	0.33	3,067	2	6,134		
900.11(b)(2)	250	1	250	2	500		
900.11(b)(3)	5	1	5	.5	2.5		
900.11(c)	9,200	0.04	368	5	1,840		$1,000
900.12(c)(2)	9,200	3,478	36,000,000	5 minutes	3,000,000		
900.12(j)(1)	25	1	25	1	25		
900.12(j)(2)	25	0.08	2	50	100		
900.15(c)	9,200	0.05	46	2	92		
900.15(d)(3)(ii)	9,200	0.0001	0.92	2	1.8		$10
900.18(c)	9,300	0.00032	3	2	6		$30
900.18(e)	10	0.0100	0.1	1	0.10		$10
FDA Form 3422	800	1	800	.25	200		
Total					3,095,716	$50	$1,040

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	Number of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours	Total Operating & Maintenance Costs
900.3(f)(1)	5	0.02	0.1	200	20	
900.4(g)	1	0.33	0.33	1	0.33	
900.12(c)(4)	9,200	1	9,200	1	9,200	$18,400
900.12(e)(13)	9,200	52	478,400	0.125	59,800	
900.12(f)	9,200	1	9,200	5	46,000	
900.12(h)	9,200	2	18,400	0.5	9,200	
Total					124,220	$18,400

[1]There are no capital costs associated with this collection of information.

The most likely respondents to this information collection will be accreditation bodies and mammography facilities seeking certification. The total capital cost associated with these regulations is $50 (§ 900.3(b)(3)). This is a one-time start up cost associated with the application for approval as an accreditation body. The total operating and maintenance cost associated with these requirements is $19,440. This is the cost that facilities bear to maintain

records under the initial and final mammography regulations.

Dated: January 29, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–2641 Filed 2–6–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Proposed Information Collection: Request for Public Comment: 60-Day Notice

AGENCY: Indian Health Service, HHS.

ACTION: Request for Public Comment: 60-day Proposed Collection; Hoz'ho'nii: An Intervention to Increase Breast and Cervical Cancer Screening Among Navajo Women.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, to provide a 60-day advance opportunity for public comment on proposed information collection projects, the Indian Health Service (IHS) is publishing for comment a summary of a proposed information collection to be submitted to the Office of Management and Budget (OMB) for review.

Proposed Collection

Title: Hoz'ho'nii: An Intervention to Increase Breast and Cervical Cancer Screening Among Navajo Women.

Type of Information Collection Request: Previously Approved Collection.

Form Number: None.

Need and Use of the Information Collection: The information is needed to evaluate a culturally appropriate educational outreach program designed to increase breast and cervical cancer screening among Navajo women ages 20 and older. The purpose is to identify barriers that may prevent Navajo women from participating in breast and cervical cancer screening by comparing changes in knowledge, attitudes, and behaviors of three study groups; educational outreach only, education outreach plus chapter-based clinic, and a control group. Results will be used to assess the impact of the impact of the educational outreach program, improve breast and cervical cancer screening, and to guide the IHS and Tribal health programs in the delivery of culturally appropriate intervention to reduce mortality rates from breast and cervical cancer among Navajo women.

Affected Public: Individuals.

Type of Respondents: Individuals.

The table below provides the estimated burden response for this information collection:

ESTIMATED BURDEN RESPONSE TABLE

Data collection instrument	Estimated number of respondents	Responses per respondent	Average burden hour per response *	Total annual burden hrs.
KAB Pretest	450	1	0.42 hr (25 minutes)	188.0 hrs
KAB Post test	450	1	0.42 hr (25 minutes)	188.0 hrs
Interviews	30	1	0.25 hr (15 minutes)	8.0 hrs
TOTAL	930	1		384.0 hrs

* For ease of understanding, burden hours are also provided in actual minutes.
There are no Capital Costs, Operating Costs and/or Maintenance Costs to report for this information collection

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send Comments and Requests For Further Information: Send your written comments, requests for more information on the proposed collection, or requests to obtain a copy of the data collection instrument(s) and instructions to: Ms. Christina Ingersoll, IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852–1601, call non-toll free (301) 443–5938, send via facsimile to (301) 443–1522, or send your E-mail requests, comments, and return address to: *cingerso@hqe.ihs.gov.*

Comment Due Date: Your comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: January 26, 2004.

Charles W. Grim,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. 04–2642 Filed 2–6–04; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Intent To Prepare an Environmental Impact Statement for the National Emerging Infectious Disease Laboratories Facility in Boston, MA

AGENCY: National Institutes of Health (NIH), DHHS.

ACTION: Notice of intent to prepare an environmental impact statement for the National Emerging Infectious Diseases Laboratories facility in Boston, MA—extension of comment period and rescheduling of public meeting.

SUMMARY: The Department of Health and Human Services (DHHS), National Institutes of Health (NIH), announced its intent to prepare an environmental impact statement (EIS) to evaluate a proposed new National Emerging Infectious Disease Laboratories facility in Boston, MA in the **Federal Register** on January 9, 2004. The Public Scoping meeting has been rescheduled to

Tuesday, February 17th from 7 to 9 p.m. in Fanueil Hall, One Dock Square (corner of Congress and North Streets), Boston, MA 02109. The comment period on the scope of the EIS for the proposed project is extended to March 2, 2004. Comments should be received no later than March 2, 2004. All comments and questions should be directed to the address listed below.

FOR FURTHER INFORMATION CONTACT: Valerie Nottingham, Chief, Environmental Quality Branch, Division of Environmental Protection, Office of Research Facilities, National Institutes of Health, DHHS, B13/2W64, Bethesda, MD 20892; by telephone 310–496–7775; fax 301–480–8056; or e-mail *nottingv@ors.od.nih.gov*.

Authority: 42 U.S.C. 4321–4341 (National Environmental Policy Act).

Dated: January 29, 2004.

Stephen A. Ficca,

Associate Director for Research Services, National Institutes of Health.

[FR Doc. 04–2650 Filed 2–6–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Notice of Appeal to the Office of Administrative Appeals; Form I–290B.

The Department of Homeland Security, Bureau of Citizenship and Immigration Services (CIS), proposes to submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

The purpose of this notice is to allow 60 days for public review and comments. Comments are encouraged and will be accepted until April 9, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New information collection.

Title of the Form/Collection: Notice of Appeal to the Office of Administrative Appeals.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–290B. Bureau of Citizenship and Immigration Services, Administrative Appeals Office.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or households. This form is used by individuals to appeal the denial or revocation of immigrant or nonimmigrant visa petitions. The information collected on this form is necessary in order for the CIS to make a determination that the appeal or motion to reopen or reconsider meet eligibility requirements.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 30,000 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 15,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Citizenship and Immigration Services, Room 4307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Dated: February 4, 2004.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, Bureau of Citizenship and Immigration Services.

[FR Doc. 04–2690 Filed 2–6–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Bureau of Citizenship and Immigration Services, DHS.

ACTION: 30-day notice of information collection under review: application for replacement/initial nonimmigrant arrival-departure record; Form I–102.

The Department of Homeland Security, Bureau of Citizenship and Immigration Services (CIS), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on November 28, 2003, at 68 FR 66843, allowing for a 60-day public comment period. No public comment was received by the CIS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 10, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, 725–17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection without change.

(2) *Title of the Form/Collection:* Application for Replacement/Initial Nonimmigrant Arrival-Department Document.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–102. Bureau of Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individual or households. This form is used by an alien temporarily residing in the United States to request a replacement of their arrival evidence.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,195 responses at 25 minutes (.416 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,073 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Citizenship and Immigration Services, Room 4307, 425 U Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Steve Cooper, PRA Clearance Officer, Department of Homeland Security, Office of Chief Information Officer, Regional Office Building 3, 7th and D Streets, SW., Suite 4626–36, Washington, DC 20202.

Dated: February 4, 2004.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, Bureau of Citizenship and Immigration Services.

[FR Doc. 04–2692 Filed 2–8–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Bureau of Citizenship and Immigration Services, DHS.

ACTION: 30-Day notice of information collection under review: application to file declaration of intention; Form N–300.

The Department of Homeland Security, Bureau of Citizenship and Immigration Services (CIS), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on November 28, 2003, at 68 FR 66843, allowing for a 60-day public comment period. No public comment was received by the CIS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 10, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, 725–17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application to File Declaration of Intention.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–300. Bureau of Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individual or households. This information collection will be used by permanent residents to file a declaration of intention to become a citizen of the United States. This collection is also used to satisfy documentary requirements for those seeking to work in certain occupations or professions or to obtain various licenses.

(5) *An estiamte of the total number of respondents and the amount of time estimated for an average respondent to respond:* 433 responses at 45 minutes (.75 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 325 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Citizenship and Immigration Services, Room 4307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Steve Cooper, PRA Clearance Officer, Department of Homeland Security, Office of Chief Information Officer, Regional Office Building 3, 7th and D Streets, SW., Suite 4626–36, Washington, DC 20202.

Dated: February 4, 2004.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, Bureau of Citizenship and Immigration Services.

[FR Doc. 04–2693 Filed 2–6–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Proposed Collection; Comment Request

AGENCY: Bureau of Citizenship and Immigration Services, DHS.

ACTION: 30-Day notice of information collection under review: request for certification of military or naval service; form N–426.

The Department of Homeland Security, Bureau of Citizenship and Immigration Services (CIS), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on November 28, 2003, at 68 FR 66844, allowing for a 60-day public comment period. No public comment was received by the CIS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 10, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, 725–17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection without change.

(2) *Title of the Form/Collection:* Request for Certification of Military or Naval Service.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–426. Bureau of Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individual or households. This form is used by naturalization applicants to document honorable service in the United States armed forces.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 45,000 responses at 45 minutes (.75 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 33,750 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Citizenship and Immigration Services, Room 4307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Steve Cooper, PRA Clearance Officer, Department of Homeland Security, Office of Chief Information Officer, Regional Office Building 3, 7th and D Streets, SW., Suite 4626–36, Washington, DC 20202.

Dated: February 4, 2004.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, Bureau of Citizenship and Immigration Services.

[FR Doc. 04–2694 Filed 2–6–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3194–EM]

Maine; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Maine (FEMA–3194–EM), dated January 26, 2004, and related determinations.

EFFECTIVE DATE: January 26, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 26, 2004, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the impact in certain areas of the State of Maine, resulting from the record/near record snow on December 14–15, 2003, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such an emergency exists in the State of Maine.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the

Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Maine to have been affected adversely by this declared emergency:

Aroostook, Franklin, Hancock, Penobscot, Piscataquis, Somerset, and Washington Counties for emergency protective (Category B) under the Public Assistance program for a period of 48 hours.

(Catalog of Federal Domestic Assistance No. 97.036, Disaster Assistance.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–2670 Filed 2–6–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1504–DR]

Federated States of Micronesia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Federated States of Micronesia (FEMA–1504–DR), dated December 19, 2003, and related determinations.

EFFECTIVE DATE: January 30, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Federated States of Micronesia is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 19, 2003:

Chuuk State for emergency protective measures (Category B) under the Public Assistance program, limited to distribution of food commodities (already designated for Individual Assistance limited to Emergency Food Assistance through USDA for the islands of Namonuito Atoll, the Hall Islands, and the Western Islands within Chuuk State.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–2668 Filed 2–6–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1507–DR]

Ohio; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Ohio (FEMA–1507–DR), dated January 26, 2004, and related determinations.

EFFECTIVE DATE: January 26, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 26, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Ohio, resulting from severe storms, flooding, mudslides, and landslides on January 3, 2004, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Ohio.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Ron Sherman, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Ohio to have been affected adversely by this declared major disaster:

Franklin, Jefferson, Licking, Morgan, Ross, Tuscarawas, and Washington Counties for Individual Assistance.

Athens, Belmont, Guernsey, Harrison, Jefferson, Monroe, Morgan, Noble, Perry, Ross, Tuscarawas, and Washington Counties for Public Assistance.

Athens, Belmont, Franklin, Guernsey, Harrison, Jefferson, Licking, Monroe, Morgan, Noble, Perry, Ross, Tuscarawas, and Washington Counties are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora

Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–2669 Filed 2–6–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Immigration and Customs Enforcement

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection under Review: Nonimmigrant Checkout Letter; Form G–146.

The Department of Homeland Security, Bureau of Immigration and Customs Enforcement (ICE), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on November 28, 2003 at 68 FR 66846, allowing for a 60-day public comment period. No public comment was received by the ICE on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 10, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection without change.

(2) *Title of the Form/Collection:* Nonimmigrant Checkout Letter.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–146. Bureau of Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or households. This form is used in making inquiries of persons in the United States or abroad concerning the whereabouts of aliens, and to request departure information by the ICE when initial investigation to locate the alien or verify his or her departure is unsuccessful.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000 responses at 10 minutes (.166 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,320 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Citizenship and Immigration Services, Room 4307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Steve Cooper, PRA Clearance Officer, Department of Homeland Security, Office of Chief Information Officer, Regional Office Building 3, 7th and D Streets, SW., Suite 4626–36, Washington, DC 20202.

Dated: February 4, 2004.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, Bureau of Citizenship and Immigration Services.

[FR Doc. 04–2691 Filed 2–6–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[GWCRC Meeting Notice No. 1–04]

Guam War Claims Review Commission

The Guam War Claims Review Commission, pursuant to section 10 of the Federal Advisory Committee Act (5 U.S.C. App. 10), hereby gives notice in regard to the scheduling of meetings for the transaction of Commission business, as follows:

Date and Time: Thursday, February 19, 2004, at 4 p.m., and Friday, February 20, 2004, at 10 a.m.

Place: Thursday, February 19, 2004: 600 E St., NW., Room 6002, Washington, DC; Friday, February 20, 2004: Grand Hyatt Hotel, 1000 H St., NW., Washington, DC.

Subject Matter: Thursday, February 19, 2004: administrative and organizational matters; Friday, February 20, 2004: public meetings at which to elicit and hear advice, opinion, and insights from legal experts concerning the recognition and payment of American nationals' claims for personal injury, death, forced labor, internment, and property loss and damage in areas occupied by Imperial Japanese forces during World War II.

Status: Open.

Requests for information concerning these meetings should be addressed to David Bradley, Executive Director, Guam War Claims Review Commission, c/o Foreign Claims Settlement Commission of the United States, 600 E St., NW., Washington DC 20579, telephone (202)616–6975, FAX (202)616–6993.

Mauricio J. Tamargo,

Chairman.

[FR Doc. 04–2643 Filed 2–6–04; 8:45 am]

BILLING CODE 4310–93–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
079033	U.S. Fish and Wildlife Service/Cabeza Prieta National Wildlife Refuge.	68 FR 65466; November 20, 2003	January 9, 2004.
079716	David Chadwick	68 FR 66851; November 28, 2003	January 6, 2004.

ENDANGERED MARINE MAMMALS AND MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
072002	Michael J. Vandemaele	68 FR 55989; September 29, 2003	December 23, 2003.
073810	Virgil R. Graber	68 FR 51588; September 29, 2003	December 31, 2003.
074543	James A. Brush	68 FR 58125; October 8, 2003	December 31, 2003.
075190	Byron H. Christie	68 FR 48932; August 15, 2003	December 23, 2003.
075607	Steven K. Raquet	68 FR 52608; September 4, 2003	December 31, 2003.

Dated: January 16, 2004.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–2678 Filed 2–6–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Council; Standard Grant Application Instructions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice notifies the public that updated instructions for applying for standard grants (*see* **SUPPLEMENTARY INFORMATION**) under the U.S. North American Wetlands Conservation Act are available on the Internet at *http://birdhabitat.fws.gov*.

DATES: Proposals may be submitted at any time. To ensure adequate review time prior to upcoming North American Wetlands Conservation Council (Council) meetings, the Council Coordinator must *receive* proposals by March 5, 2004, and July 30, 2004.

ADDRESSES: For detailed application instructions, sample proposal information, and eligibility criteria, visit the North American Wetlands Conservation Act (NAWCA) Web site at *http://birdhabitat.fws.gov*. If you cannot access the Web site, contact the Council Coordinator at U.S. Fish and Wildlife Service, Division of Bird Habitat Conservation, 4401 North Fairfax Drive, MBSP 4075, Arlington, VA 22203, or by phone at 703–358–1784, or by fax at 703–358–2282, or by e-mail at *dbhc@fws.gov*. Send proposals to the Council Coordinator at the above address by mail (faxed proposals are not accepted). Send one original and two copies by regular mail and send one copy by electronic mail to the Council Coordinator. Send a copy of the proposal to your U.S. North American Waterfowl Management Plan (NAWMP) Joint Venture Coordinator (*see* next section for JV Coordinators) and all partners in the proposal.

FOR FURTHER INFORMATION CONTACT: North American Wetlands Conservation Council Coordinator at (703) 358–1784 or *dbhc@fws.gov*, David Buie at (703) 358–1784 or *david_buie@fws.gov* or a JV Coordinator at the number given below. JV Coordinators can give you advice about developing a proposal, about proposal ranking, and additional information that may be required for compliance requirements for the National Environmental Policy Act, Endangered Species Act, National Historic Preservation Act, and contaminant surveys.

Atlantic Coast (CT, DE, FL, GA, MA, MD, ME, NC, NH, NJ, NY, PA, Puerto Rico, RI, SC, VA, VT, WV) 413–253–8269 or *andrew_milliken@fws.gov*.

Central Valley (Central Valley of CA) 916–414–6459 or *robert_shaffer@fws.gov*.

Gulf Coast (coastal areas of AL, LA, MS, TX) 505–248–6876 or *greg_esslinger@fws.gov*.

Intermountain West (AZ, eastern CA, western CO and ID, southwest MT, western NM, NV, eastern OR, UT, eastern WA, WY) 801–975–3330 x 129 or *iwjv@xmission.com*.

Lower Mississippi Valley (AR; eastern KY; northern LA; eastern MS, OK, and TN; northeastern TX) 601–629–6600 or *charles_baxter@fws.gov*.

Northern Great Plains 701–250–4463 x 141 or *aschollett@fs.fed.us*.

Pacific Coast (AK, coastal areas of northern CA, HI, coastal areas of OR

and WA) 360–696–7630 or *carey_smith@fws.gov*.

Playa Lakes (southeastern CO, southwestern KS, eastern NM, western OK, TX panhandle) 303–926–0777 or *mike.carter@pljv.org*.

Prairie Pothole (northwestern IA, western, MN, northern MT, northern and southeastern ND, eastern SD) 303–236–8155 x 252 or *carol_lively@fws.gov*.

Rainwater Basin (17 counties in southeastern NE) 308–382–8112 or *steve_moran@fws.gov*.

San Francisco Bay (San Francisco Bay in CA) 415–883–3854 or *bhuning@sfbayjv.org*.

Upper Mississippi River–Great Lakes (eastern IA and counties bordering the Missouri River, IL, IN, KS counties bordering the Missouri River, MI, MO, eastern MN, NE counties bordering the Missouri River, OH, WI) 612–713–5433 or *Barbara_pardo@fws.gov*.

SUPPLEMENTARY INFORMATION: The Council has two U.S. conservation grants programs for acquisition, restoration, and enhancement of wetlands in the United States. Any individual or organization who has a long-term, partner-based project with matching funds can apply. The focus of this notice is standard grant proposals for requests from $50,001 to $1,000,000 per proposal (if well justified, more funds may be requested). A separate notice will be issued later this year for small grant proposals for requests up to $50,000 per proposal.

The NAWCA (16 U.S.C. 4401 *et seq.*) established the Council, a Federal-State-private body that recommends projects to the Migratory Bird Conservation Commission (MBCC) for final approval and requires that proposals contain a minimum 1:1 ratio of non-Federal matching funds to grant funds. ''Match'' (as referred to throughout this document) can be cash, in-kind services, or land acquired/title donated for wetlands conservation purposes.

This notice provides a summary of the 2004 proposal instructions and eligibility criteria available on the Internet to develop a NAWCA standard grant proposal. In order to complete a proposal correctly, consult the Web site at *http://birdhabitat.fws.gov* for detailed instructions. If you cannot access the Web site, contact the Council Coordinator.

Paperwork Reduction Act: In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget has assigned clearance number 1018–0100 to this information collection. Collection is necessary to gain a benefit in the form of a grant, as determined by the Council and MBCC; is necessary to determine the eligibility and relative value of wetland projects; results in an approximate paperwork burden of 400 hours per application; and does not carry a premise of confidentiality. Your response is voluntary. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The public may submit comments on the accuracy of the estimated average burden hours for application preparation and to suggest ways in which the burden may be reduced. Comments may be submitted to: Information Collection Clearance Officer, Mail Stop 222 ARLSQ, U.S. Fish and Wildlife Service, Washington, DC 20240.

New NAWCA Proposal Information: Six documents are available on the Internet at *http://birdhabitat.fws.gov* and are summarized below:

1. *2004 Grant Administration Policies and Assistance Award.* Describes policies and procedures that NAWCA projects must comply with and shows the one-page grant agreement that will be completed if the proposal is funded.

2. *2004 Eligibility Criteria & Processes.* Describes eligible activities and costs for NAWCA projects, gives links to cost principles that apply to all Federal grant programs, and describes steps in the proposal funding process. A standard grant proposal is a 4-year plan of action supported by a NAWCA grant and partner funds to conserve wetlands and wetlands-associated fish and wildlife through acquisition (including easements and land title donations), restoration, and/or enhancement (including establishment). Match must be non-Federal and at least equal to the grant request (referred to as a 1:1 match). Match is eligible up to 2 years prior to the year the proposal is submitted, and grant and match funds are eligible during the 2-year future Grant Agreement period.

3. *2004 Proposal Instructions.* Describes changes from the 2003 instructions, gives required information for a proposal, and provides examples. A proposal has the following sections: Project Officer's Page; Summary; Purpose and Scope; Budget and Work Plan; Technical Assessment Questions; Attachments (budget table, tract table, partner contribution statements, optional matching contributions plan, Standard Form 424, optional aerial photographs, maps); and Easements, Leases, and Indirect Cost Rate Agreement.

4. *2004 Word Proposal Outline.* A fill-in-the-blank proposal using the Word program.

5. *2004 WordPerfect Proposal Outline.* A fill-in-the-blank proposal using the WordPerfect program.

6. *2004 Excel Budget Table.* A fill-in-the-blank budget table for those who do not want to use the budget tables provided in the Word and WordPerfect files.

Dated: December 24, 2003.

Marshall P. Jones, Jr.,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 04–2717 Filed 2–6–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–921–1430–BX–026J; UTU–81100]

Notice of Application for Recordable Disclaimer of Interest in Public Highway Right-of-Way Established Pursuant to Revised Statute 2477 (43 U.S.C. 932, Repealed October 21, 1976), Weiss Highway, Juab County, UT

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of application.

SUMMARY: On January 14, 2004 the State of Utah and Juab County submitted an application for a recordable disclaimer of interest from the United States pursuant to Section 315 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C 1745), the regulations contained in 43 CFR subpart 1864, and the April 9, 2003 Memorandum of Understanding Between the State of Utah and the Department of the Interior on State and County Road Acknowledgement. This recordable disclaimer of interest application, identified by BLM Serial Number UTU–81100, is for the Weiss Highway in Juab County, Utah. A recordable disclaimer of interest, if issued, will confirm the United States has no property interest in the identified public highway right-of-way. This Notice is intended to notify the public of the pending application and the State's and County's grounds for supporting it.

The Weiss Highway is a major east-west access route through Juab County, Utah. The highway is approximately 99 miles long and connects with U.S. Highway 6 at Jericho Junction in eastern Juab County and runs generally west to its intersection with the Callao-Trout Creek Road in the western part of the County. The highway passes through

approximately 88½ miles of public lands administered by BLM. The highway also passes through 13 parcels of land administered by the State of Utah, School and Institutional Trust Lands Administration (aggregating approximately 10 miles) and three private land parcels (aggregating approximately ½ mile). The Weiss Highway is an improved (graded) highway with a native dirt/gravel travel surface throughout its entire length, with the exception of a paved segment approximately six miles long on the eastern end. The recordable disclaimer of interest application pertains only to the highway segments which pass through BLM administered public lands. Details of the application are provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: On or before April 9, 2004, all interested parties may submit comments on the State's and County's application as follows. Comments on the application should reference BLM Case File Serial Number UTU–81100. Public comment will be accepted if received by BLM or postmarked no later than 60 days following the date of publication of this notice. BLM will review all timely comments received on the application, and will address all relevant, substantive issues raised in the comments. A final decision on the merits of the application will not be made until at least 90 days has elapsed from the date of publication of this notice.

ADDRESSES: Interested parties and the public are encouraged to access the RS2477 Disclaimer Process public Web site at *http://www.ut.blm.gov/rs2477* to review the application materials and provide comments on the application. For those without access to the public Web site, written comments may be provided to the Chief, Branch of Lands and Realty, BLM Utah State Office (UT–921), P.O. Box 45155, Salt Lake City, Utah 84145–0155.

FOR FURTHER INFORMATION CONTACT: Mike DeKeyrel, Realty Specialist, BLM Utah State Office Branch of Lands and Realty (UT–921) at the above address or Phone (801) 539–4105 and Fax (801) 539–4260.

SUPPLEMENTARY INFORMATION: On January 14, 2004, the State of Utah filed an application for a Recordable Disclaimer of Interest for the public highway right-of-way identified as Weiss Highway which passes through public lands administered by the Bureau of Land Management in Juab County. The State of Utah and Juab County assert that they hold a joint and undivided property interest in the Weiss Highway right-of-way as granted pursuant to the authority provided by Revised Statute 2477 (43 U.S.C. 932, repealed October 21, 1976) over public lands administered by the Bureau of Land Management. The State submitted the following information with the application in both paper copy and in electronic form (Compact Disk):

1. Narrative description of the location, characteristics and attributes of the Weiss Highway which have been summarized above. The claimed right-of-way width ranges from 40 to 60 feet.
2. Centerline description of the road based on Global Positioning System (GPS) data.
3. Detailed descriptions of the right-of-way on 17 identified segments passing through public lands including beginning and end points, surface type, and disturbed width. The application identifies the disturbed right-of-way width as 40 feet wide on eight segments (43.3 miles) and 60 feet wide on nine segments (45.4 miles).
4. Legal description by aliquot part (*e.g.*, ¼¼ section) of the land parcels through which the road passes.
5. Maps showing location of the Weiss Highway and the location and dates of water diversion points and mining locations to which the highway provides access.
6. Aerial photography dated 1976 and 1990.
7. Signed and notarized affidavits by seven persons attesting to the road location; its establishment as a highway prior to October 21, 1976; familiarity with the road character and attributes including type of travel surface, disturbed width, associated improvements and ancillary features such as bridges, cattleguards, etc.; current public usage of the road; the historic and current purposes for which the road is used; and evidence of periodic maintenance.
8. Recent photographs of the highway at various points along its alignment.

The State of Utah did not identify any known adverse claimants of the identified public highway rights-of-way.

If approved, the recordable disclaimer document would confirm that the United States has no property interest in the public highway right-of-way as it is identified in the official records of the Bureau of Land Management as of the date of the disclaimer document.

Comments, including names and street addresses of commenters, will be available for public review at the Utah State Office (see address above), during regular business hours 8 a.m. to 4 p.m. local time, Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to hold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or business will be made available for public inspection in their entirety. Anonymous comments will not be accepted.

Dated: January 27, 2004.

Don Banks,

Acting State Director.

[FR Doc. 04–2651 Filed 2–6–04; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–1610–DU]

Notice of Intent To Prepare the South Park Land Tenure Adjustment Plan and Amend the Royal Gorge Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) will initiate a comprehensive planning effort to address land tenure adjustments for a portion of the Royal Gorge Field Office. The plan, entitled the South Park Land Tenure Adjustment Plan, will focus on 72,000 acres of BLM administered lands that lie in the South Park planning unit and the northern end of the Badger Creek planning unit in Park County, Colorado. The land tenure plan would potentially amend the Royal Gorge RMP, that currently states that BLM would dispose of all BLM-administered lands in Park County. The land tenure plan and plan amendment would reevaluate these decisions by examining other possible land tenure scenarios. The amendment process will be used to identify those lands to be retained in public ownership and those that can still be disposed of. The amendment process will attempt to reconcile the needs of the public while protecting the cultural and natural resources of the BLM-managed lands. The EA will analyze and compare the impacts of any changes in land tenure adjustment status with the continuation of current management, and other alternatives that may be identified.

The BLM will prepare the amendment and associated EA pursuant to the BLM planning regulations in 43 CFR 1600.

The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. The BLM will ask the Park County Commissioners and the Colorado Division of Wildlife to be cooperators on the plan amendment. BLM will work with interested parties to identify the management decisions that are best suited to local, regional, and national needs. The public scoping process will identify planning issues and develop planning criteria. The BLM will prepare the land tenure plan through coordination with other federal, state and local agencies, and affected users of BLM-administered lands.

ADDRESSES: Please send written comments to Bureau of Land Management, Royal Gorge Field Office, ATTN: South Park Land Tenure Plan, 3170 East Main Street, Canon City, CO 81212; FAX 719–269–8599.

DATES: This notice initiates the public scoping process. Comments on issues and concerns can be submitted in writing to the address listed above and will be accepted throughout the creation of the Draft RMP amendment/EA. All public meetings will be announced through the local news media, newsletters, and the BLM Web site at: *http://www.co.blm.gov/ccdo/canon.htm,* at least 15 days prior to the event. The minutes and list of attendees for each meeting will be available in the Field Office and at the Web site, and they will be open for 30 days to any participant who wishes to clarify the views they expressed.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to the mailing list, contact Pete Zwaneveld, Co-Team Leader, at the Royal Gorge Field Office address listed above or by calling (719) 269–8559, or e-mail at *rgfo_comments@blm.gov.*

SUPPLEMENTARY INFORMATION: The BLM will hold public meetings during the plan scoping period. Early participation is encouraged and will help determine the future land tenure status of the BLM-administered lands involved in this amendment. In addition to the ongoing public participation process, the BLM will provide formal opportunities for public participation by requesting comments upon BLM's publication of the draft RMP amendment, the EA, and the (unsigned) Finding of No Significant Impact (FONSI). The BLM will notify the Governor of Colorado, the Park County Commissioners, adjacent landowners, and potentially affected members of the public on the proposed changes in land tenure. Documents pertinent to this proposal may be examined at the Royal Gorge Field Office. Comments, including names and street addresses of respondents, will be available for public review at the Royal Gorge Field Office during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except holidays, and may be published as part of the EA. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

The BLM-managed lands in Park County are scattered and, in many cases, difficult to manage and hard for the public to access or use. The current RMP decisions call for disposal of most of these lands. Since approval of the RMP in 1996, several new issues have arisen that bring into question the disposal of some of these lands. These issues include an expression by local citizens and the Park County Commissioners of the value of the BLM-administered lands to the public as a whole; the status of the mountain plover as a BLM sensitive species; the recognition by the U.S. Fish & Wildlife Service of the importance of fens (wetlands of concern); and the completion of a Strategic Master Plan for Park County. The plover and fen issues restrict BLM in the disposal of BLM-administered lands. Consolidation of BLM-administered lands to accommodate these issues has become a more desirable option. To do this, BLM would have to amend the Royal Gorge RMP with new decisions on land tenure.

Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals, the Park County Commissioners, and user groups. They represent the BLM's knowledge to date on the existing issues and concerns with current management. The preliminary issues include: impacts to users of BLM-administered lands and adjacent private landowners; impacts to wildlife habitat; and impacts to water quality, vegetation, including riparian and wetland areas, and soils. These issues, along with others that may be identified through public participation, will be considered in the planning process. After gathering public comments on what issues the plan amendment should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the plan amendment;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of this plan amendment.

Rationale will be provided in the plan for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan amendment. The public is encouraged to help identify these questions and concerns during the scoping phase.

An interdisciplinary approach will be used to develop the plan amendment in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include specialists with expertise in rangeland management, minerals and geology, forestry, outdoor recreation, law enforcement, archaeology, wildlife and fisheries, lands and realty, hydrology, soils, vegetation, and fire.

Roy L. Masinton,

Field Manager.

[FR Doc. 04–2652 Filed 2–6–04; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–04–1020–PH]

New Mexico Resource Advisory Council, Notice of Call for Nominations

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U. S. Department of the Interior, Bureau of Land Management, New Mexico Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting dates are February 26–27, 2004, has been moved from Marbob Energy, 2208 West Main, Artesia, New Mexico. The new location is the Artesia Country Club, 2701 W. Ritchie, Artesia, New Mexico. The meeting begins at 8 a.m. on both days and will adjourn at approximately 5 p.m. on Thursday and 11:30 a.m. on Friday. The three established RAC

working groups may have a late afternoon or an evening meeting on Thursday, February 26, 2004.

An optional field trip is planned for Wednesday, February 25, 2004. The public comment period is scheduled for Wednesday, February 25, from 6–8 p.m. at the Best Western Pecos Inn, 2209 West Main Street. The public may present written comments to the RAC. Depending on the number of individuals wishing to comment and time available, oral comments may be limited.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in New Mexico. All meetings are open to the public. At this meeting, topics for discussion include:

Rehabilitation of older oil and gas well sites, access issues on Cooke's Peak, oil and gas and cultural management in the Carlsbad Area, the Preferred Upstream Management Practices (PUMP) III Project (a cultural resources Geographic Information System database focused on oil and gas fields), update on noxious weeds program, and proposed RAC initiatives.

FOR FURTHER INFORMATION CONTACT: Theresa Herrera, New Mexico State Office, Office of External Affairs, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, (505) 438–7517.

Dated: February 3, 2004.

Ron Dunton,

Acting State Director.

[FR Doc. 04–2672 Filed 2–6–04; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1430–BJ] ES–052046, Group 43, Illinois

Notice of Filing of Plat of Survey; Illinois

The Bureau of Land Management (BLM) will officially file the plat of the dependent resurvey of a portion of the subdivisional lines and the survey of a portion of the subdivision of section 17, which define the Great River National Wildlife Refuge acquisition boundary in Township 7 South, Range 5 West, Fourth Principal Meridian, Illinois, accepted on January 29, 2004, in the Eastern States Office, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

The survey was requested by the U.S. Fish and Wildlife Service.

All inquiries or protests concerning the technical aspects of the survey must be submitted in writing to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to the date of the official filing.

We will place a copy of the plat we described in the open files. Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: January 29, 2004.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 04–2675 Filed 2–6–04; 8:45 am]

BILLING CODE 4310–GJ–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–458]

Commercial Availability of Apparel Inputs (2004): Effect of Providing Preferential Treatment to Apparel From Sub-Saharan African, Caribbean Basin, and Andean Countries

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: February 2, 2004.

SUMMARY: Following receipt of a request from the United States Trade Representative (USTR) on January 27, 2004, the Commission instituted investigation No. 332–458, *Commercial Availability of Apparel Inputs (2004): Effect of Providing Preferential Treatment to Apparel from Sub-Saharan African, Caribbean Basin, and Andean Countries.* The Commission instituted the investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to provide advice regarding the probable economic effect of granting preferential treatment to apparel made from fabrics or yarns that are the subject of petitions filed in 2004 with the Committee for the Implementation of Textile Agreements (CITA) under the ''commercial availability'' provisions of the African Growth and Opportunity Act (AGOA), the United States-Caribbean Basin Trade Partnership Act (CBTPA), and the Andean Trade Promotion and Drug Eradication Act (ATPDEA). The Commission conducted similar investigations in the years 2001–03 to provide advice with respect to petitions filed in those years.

FOR FURTHER INFORMATION CONTACT: For general information, contact Jackie W. Jones (202–205–3466, *jones@usitc.gov*) of the Office of Industries; for information on legal aspects, contact William Gearhart (202–205–3091, *wgearhart@usitc.gov*) of the Office of the General Counsel. The media should contact Margaret O'Laughlin, Public Affairs Officer (202–205–1819). Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information about the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) *http://edis.usitc.gov.*

Background: The Commission will follow procedures similar to those followed in the commercial availability reviews in 2003 under investigation No. 332–450. Thus, in 2004, the Commission will provide advice for each commercial availability review under one investigation number. In addition, the Commission will post a notification letter announcing the initiation of each review on its Internet site (*http://www.usitc.gov*) and send the notification letter to a list of interested parties who wish to be automatically notified via facsimile about any requests for which the Commission initiated analysis. Interested parties may be added to this list by notifying Jackie W. Jones (202–205–3466, *jones@usitc.gov*). The notification letter will specify the article(s) under consideration, the deadline for submission of public comments on the proposed preferential treatment, and the name, telephone number, and Internet e-mail address of a staff contact for additional information. The Commission has a special area on its Internet site (*http://www.usitc.gov/332s/shortsup/shortsupintro.htm*) to provide the public with information on the status of each request for which the Commission initiated analysis. CITA publishes a summary of each request from interested parties in the **Federal Register** and posts them on its Internet site (U.S. Department of Commerce, Office of Textiles and Apparel, at *http://otexa.ita.doc.gov/fr.htm*).

The Commission will submit its reports to the USTR not later than the 42nd day after receiving a request for advice. The Commission will issue a public version of each report as soon as possible thereafter, with any

confidential business information deleted.

Written Submissions: Because of time constraints, the Commission will not hold public hearings in connection with the advice provided under this investigation number. However, interested parties will be invited to submit written statements (a signed original and 3 copies) concerning the matters to be addressed by the Commission in this investigation. The Commission is particularly interested in receiving input from the private sector on the likely effect of any proposed preferential treatment on affected segments of the U.S. textile and apparel industries, their workers, and consumers.

All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8); any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). In the event that confidential treatment of the document is requested, an additional copy must be filed, in which the confidential information must be deleted. Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Commission may include confidential business information submitted in the course of this investigation in the reports to the USTR. The Commission will also issue a public version of each report. Any confidential business information received by the Commission in this investigation and used in preparing the reports to the USTR will not be published in the public version of the report in a manner that would reveal the operations of the firm supplying the information. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436.

The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's Rules (19 CFR 201.8) (see Handbook for Electronic Filing Procedures, available on the Commission's Internet site at *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or *edis@usitc.gov*).

List of Subjects

Caribbean, African, Andean, tariffs, imports, yarn, fabric, and apparel.

By order of the Commission.

Issued: February 3, 2004.

Marilyn R. Abbott,

Secretary.

[FR Doc. 04–2687 Filed 2–6–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1043–1045 (Final)]

Polyethylene Retail Carrier Bags From China, Malaysia, and Thailand

AGENCY: International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731–TA–1043–1045 (Final) under § 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China, Malaysia, and Thailand of polyethylene retail carrier bags, provided for in subheading 3923.21.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: January 26, 2004.

FOR FURTHER INFORMATION CONTACT: Olympia Hand, (202) 205–3182, Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of polyethylene retail carrier bags from China, Malaysia, and Thailand are being sold in the United States at less than fair value within the meaning of § 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on June 20, 2003, by PCL Packaging, Inc., Barrie, Ontario; Sonoco Products Co., Hartsville, SC; Superbag Corp., Houston, TX; Vanguard Plastics, Inc., Farmers Branch, TX; and Interplast Group, Ltd., Livingston, NJ; collectively known as the Polyethylene Retail Carrier Bag Committee.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing

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[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as ''PRCBs, which may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than .035 inch (0.889 mm) and no less than .00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments (*e.g.*, grocery, drug, convenience, department, specialty retail, discount stores, and restaurants) to their customers to package and carry their purchased products. The scope of the investigations excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film; and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments (*e.g.*, garbage bags, lawn bags, trash-can liners).''

date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on May 26, 2004, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on June 10, 2004, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 3, 2004. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 7, 2004, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is June 3, 2004. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is June 17, 2004; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before June 17, 2004. On July 6, 2004, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 8, 2004, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by § 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: February 3, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–2659 Filed 2–6–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1046 (Final)]

Tetrahydrofurfuryl Alcohol (THFA) From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1046 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of THFA, provided for in subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: January 27, 2004.

FOR FURTHER INFORMATION CONTACT: Jai Motwane (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled as a result of an affirmative preliminary

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as: ''tetrahydrofurfuryl alcohol ($C_5H_{10}O_2$) ('THFA'). THFA, a primary alcohol, is a clear, water white to pale yellow liquid. THFA is a member of the heterocyclic compounds known as furans and is miscible with water and soluble in many common organic solvents.''

determination by the Department of Commerce that imports of THFA from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on June 23, 2003 by Penn Specialty Chemicals, Inc., Plymouth Meeting, PA.

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on March 30, 2004, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on April 13, 2004 at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 5, 2004. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 7, 2004 at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is April 6, 2004. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is April 20, 2004; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before April 20, 2004. On May 6, 2004, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 10, 2004, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: February 3, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–2658 Filed 2–6–04; 8:45 am]

BILLING CODE 7020–02–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

February 2, 2003.

TIME AND DATE: 10 a.m., Thursday, February 12, 2004.

PLACE: Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Closed [pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in closed session:

In re Request for Relief Cases. (The Commission will discuss methods of disposing of the approximately 50 cases pending on the Commission's docket that involve requests for relief from final Commission orders.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

[FR Doc. 04–2889 Filed 2–5–04; 3:25 pm]

BILLING CODE 6735–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–04783]

Notice of Consideration of Amendment Request for the Dow Chemical Company and Release of Its Facility in Midland, MI

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of amendment request to Byproduct Material License No. 21–00265–06.

FOR FURTHER INFORMATION CONTACT: Dr. Peter J. Lee, Division of Nuclear Materials Safety, U.S. Nuclear

Regulatory Commission, Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351; telephone (630) 829–9870 or by email at *pjl2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to the Dow Chemical Company Byproduct Material License No. 21–00265–06, to remove the possession or use of thorium from its Midland, Michigan facility license and release that portion of the facility for unrestricted use.

The NRC staff has prepared an Environmental Assessment (EA) in support of this licensing action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the proposed action is to remove the possession or use of thorium from its Midland, Michigan facility license and release that portion of the facility for unrestricted use. This license was approved for research and development of a thorium containing catalyst. On September 26, 2003, Dow Chemical Company submitted a license amendment request to remove the possession or use of thorium from its license. The Dow Chemical Company has conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets the license criteria in subpart E of 10 CFR part 20 for unrestricted release. The staff has examined the Dow Chemical Company's request and the information that the licensee has provided in support of its request, including the surveys performed by the Dow Chemical Company to demonstrate compliance with 10 CFR 20.1402, "'Radiological Criteria for Unrestricted Use,'" to ensure that the NRC's decision is protective of the public health and safety and the environment. Based on its review, the staff has determined that the affected environment and the environmental impacts associated with the removal of the possession or use of thorium from Byproduct Material License No. 21–00265–06 are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities" (NUREG–1496). Additionally, no non-radiological impacts were identified. The staff also finds that the proposed release for unrestricted use of the Dow Chemical Company facility is in compliance with the 10 CFR part 20.1402 and no other activities in the area that could result in cumulative impacts.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of Dow Chemical Company's proposed license amendment to remove the possession or use of thorium from its Midland, Michigan facility license and release that portion of the facility for unrestricted use. On the basis of the EA, the staff has concluded that the environmental impacts from the proposed action would not be significant. Accordingly, the staff has determined that a FONSI is appropriate, and has determined that the preparation of an environmental impact statement is not warranted.

IV. Further Information

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," Dow Chemical Company's request, the EA summarized above, and the documents related to this proposed action are available electronically for public inspection and copying from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.* These documents include Dow Chemical Company's letter dated September 26, 2003, with enclosures (Accession No. ML033570177); and the EA summarized above (Accession No. ML040280082).These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Lisle, Illinois, this 27th day of January 2004.

Christopher G. Miller,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, RIII.

[FR Doc. 04–2665 Filed 2–6–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of February 9, 2004:

An Open Meeting will be held on Wednesday, February 11, 2004 at 10 a.m., in Room 1C30, the William O. Douglas Room, and Closed Meetings will be held on Wednesday, February 11, 2004 at 12:30 p.m. and Thursday, February 12, 2004 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), (9B), and (10) and 17 CFR 200.402(a) (3), (5), (7), (9ii), and (10), permit consideration of the scheduled matters at the Closed Meetings.

Commissioner Goldschmid, as duty officer, voted to consider the items listed for the closed meetings in closed sessions.

The subject matter of the Open Meeting scheduled for Wednesday, February 11, 2004 will be:

1. The Commission will consider a recommendation to propose for public comment an amendment to rule12b–1 under the Investment Company Act of 1940. The recommended proposal would prohibit investment companies from paying for the distribution of their shares with their brokerage commissions. The Commission will also consider whether to ask for comment about the need for additional changes to rule 12b–1.

For further information, please contact Hester Peirce at (202) 942–0690.

2. The Commission will consider whether to adopt amendments to Forms N–1A, N–2, N–3, and N–CSR, Articles 6 and 12 of Regulation S–X, and rules 30a–2, 30a–3, and 30d–1 under the Investment Company Act of 1940, as well as new rule 30b1–5 under the Investment Company Act of 1940 and new Form N–Q under the Investment Company Act of 1940 and the Securities Exchange Act of 1934. The amendments would (1) require a registered open-end management investment company to disclose in its reports to shareholders fund expenses borne by shareholders during the reporting period; (2) require a registered management investment company to file and certify a schedule of its complete portfolio holdings with the Commission on a quarterly basis; (3) permit a registered management investment company to include a summary portfolio schedule in reports to shareholders and exempt money

market funds from including a portfolio schedule in reports to shareholders, provided that the complete portfolio schedule is filed with the Commission and available to shareholders upon request; (4) require a registered management investment company to include a tabular or graphic presentation of a fund's portfolio holdings in its reports to shareholders; and (5) require a registered open-end management investment company to include Management's Discussion of Fund Performance in its annual report to shareholders.

For further information, please contact Christopher Kaiser at (202) 942–0724.

3. The Commission will consider whether to propose amendments to Schedule 14A under the Securities Exchange Act of 1934, and to Forms N–1A, N–2, and N–3 under the Securities Act of 1933 and the Investment Company Act of 1940. The proposals would require a registered management investment company to provide disclosure in its reports to shareholders regarding the basis for the board of directors' approval of an investment advisory contract. They would also enhance existing disclosure requirements in the registration statements of registered management investment companies and in proxy statements regarding the basis for the board's approval of, or recommendation that shareholders approve, an investment advisory contract.

For further information, please contact Deborah D. Skeens at (202) 942–0562.

The subject matter of the Closed Meeting scheduled for Wednesday, February 11, 2004 will be:

Post-argument discussion.

The subject matters of the Closed Meeting scheduled for Thursday, February 12, 2004 will be:

Formal orders of investigation;

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions;

Regulatory matters involving a financial institution; and

Adjudicatory matter.

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: February 4, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–2808 Filed 2–5–04; 12:05 pm]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49172; File No. SR–CBOE–2004–06]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Extension of a Linkage Fee Pilot Program

February 2, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 2, 2004, the Chicago Board Options Exchange, Inc. (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to extend the current pilot program for six months until July 31, 2004 applicable to Options Intermarket Linkage (''Linkage'') fees.

The proposed fee schedule is available at the Exchange 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 CBOE 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's current fee structure for Principal (''P'') and Principal Acting as Agent (''P/A'') Orders[3] executed on the Exchange is operating under a pilot program scheduled to expire on January 31, 2004.[4] Currently, because all Linkage Orders received by CBOE are for the account of a broker-dealer market maker on another exchange, the fees applicable to P and P/A Orders are the same as fees applicable to market makers on other exchanges that submit orders to CBOE outside of the Linkage, taking into account how those orders are handled at CBOE. The Exchange now proposes to extend the pilot program to July 31, 2004.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(4) of the Act[6] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] Under the Plan and Exchange Rule 6.80(12) which tracks the language of the Plan, a ''Linkage Order'' means an Immediate or Cancel order routed through the Linkage as permitted under the Plan for the Purpose of Creating and Operating an Options Intermarket Linkage. There are three types of Linkage Orders:

(i) ''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) ''P Order,'' which is an order for the principal account of an Eligible Market Maker and is not a P/A Order; and

(iii) ''Satisfaction Order,'' which is an order sent through the Linkage to notify a member of another Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

[4] *See* Securities Exchange Act Release No. 47761 (April 29, 2003), 68 FR 24042 (May 6, 2003) (SR–CBOE–2003–11).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–CBOE–2004–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should be submitted by March 1, 2004.

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,[7] and, in particular, with the requirements of Section 6(b) of the Act [8] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission believes that the extension of the CBOE's Linkage fee pilot until July 31, 2004 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[10] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval will preserve the Exchange's existing pilot program for Linkage fees without interruption as the CBOE and the Commission further consider the appropriateness of Linkage fees.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CBOE–2004–06) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–2696 Filed 2–6–04; 8:45 am]

BILLING CODE 8010–01–P

[7] In approving this rule, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(2).

[11] *Id.*

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49169; File No. SR–NASD–2003–178]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify Certain Listing Fees for Foreign Issuers and To Make a Technical Change to the Rule Pertaining to Record-Keeping Fees for Issuers Listed on the Nasdaq SmallCap Market

February 2, 2004.

On December 3, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify certain listing fees for foreign issuers and to make a technical change to the rule that pertains to record-keeping fees for issuers listed on The Nasdaq SmallCap Market.

The proposed rule change was published for comment in the **Federal Register** on December 15, 2003.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[4] In particular, the Commission believes that the proposed rule change is consistent with section 15A(b)(5) of the Act,[5] in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Specifically, the Commission believes that the revised fee schedules should reduce the current disparity in the entry and annual fees that are paid by Nasdaq issuers.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NASD–2003–178) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–2695 Filed 2–6–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48889 (December 5, 2003), 68 FR 69736.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78*o*–3(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49151; File No. SR–Phlx–2004–01]

Self-Regulatory Organizations; Notice of Filing and Amendments No. 1 and 2 Thereto and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Automatic Execution of Registered Options Trader (''ROT'') Limit Orders on the Limit Order Book

January 29, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4,[2] thereunder, notice is hereby given that on January 6, 2004, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in items I, II, and III, below. On January 15, 2004, the Exchange filed Amendment No. 1.[3] On January 28, 2004, the Exchange filed Amendment No. 2.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, and Amendments No. 1 and 2, from interested persons, and granting accelerated approval to the proposal, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 1080, Commentary .04, to modify the timing of the deployment of a feature of its Automated Options Market (AUTOM)[5] system in light of the Exchange's proposal to introduce its new electronic trading platform for options, to be known as ''Phlx XL.''[6] The text of the proposed rule change is set forth below.

Brackets indicate deletions; italics indicate new text.

Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X)

Rule 1080.

(a)–(j) No change.

Commentary:

.01–.03 No change.

.04 * * *

[The Exchange shall modify its AUTO-X system not later than January, 2004, so that it shall automatically execute eligible incoming orders against Phlx Price Improving ROT and specialist price improving orders and orders matching such price-improving orders entered via electronic interface with AUTOM resting on the limit order book. The Exchange will deploy the modified system over a 15-month period.]

Not later than ten days following approval by the Securities and Exchange Commission of the rules applicable to the Exchange's electronic trading platform, Phlx XL, the Exchange will commence the initial deployment of Phlx XL by allowing specialists and ROTs who are Streaming Quote Traders (''SQTs,'' as defined in the Phlx XL rules) to submit electronic quotations in Streaming Quote Options (as defined in the Phlx XL rules), and ROTs who are not SQTs to submit limit orders onto the limit order book via electronic interface with AUTOM or manually through a Floor Broker or the Specialist. Eligible incoming orders and quotations will automatically execute against quotations of specialists and SQTs and orders of ROTs in accordance with the functionality of the Phlx XL system, as set forth in the Phlx XL rules.

Over a period following the commencement of operation of the Phlx XL system, the Exchange expects to gradually increase the number of Streaming Quote Options eligible to be traded via Phlx XL. If the Phlx XL system is in operation on April 30, 2005, but less than all of the options traded on the Exchange are Streaming Quote Options, then the Exchange shall, as of April 30, 2005, ensure that the AUTOM system automatically executes eligible incoming orders in options that are not then Streaming Quote Options against Phlx Price Improving ROT and specialist price improving orders and orders matching such price-improving orders entered via the electronic interface with AUTOM described in this Commentary .04 and that are resting on the limit order book.

If the Exchange for any reason determines not to deploy Phlx XL, or if, following the initial deployment of the Phlx XL system, the deployment of Phlx XL is terminated for any reason, then the Exchange shall, within 30 days of such determination not to deploy Phlx XL or termination, ensure that the AUTOM system (or any successor thereto) automatically executes eligible incoming option orders against Phlx Price Improving ROT and specialist price improving orders and orders matching such price-improving orders entered via the electronic interface with AUTOM described in this Commentary .04 and that are resting on the limit order book. In such event, the Exchange shall, at the time of such termination, identify to the Commission and to members and member organizations the options subject to such automatic execution, and shall cause all options to be subject to automatic execution by April 30, 2005.

.05–.07 No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx 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 Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 1080, Commentary .04, to reflect the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letter from Richard S. Rudolph, Director and Counsel, Legal Department, Phlx to Deborah Lassman Flynn, Assistant Director, Division of Market Regulation (''Division''), Commission, dated January 15, 2004 (''Amendment No. 1''). In Amendment No. 1, the Exchange proposes to amend the rule text to clarify that if Phlx XL is not deployed for any reason, the Exchange would implement a functionality whereby eligible incoming orders and quotations would automatically execute against quotations of specialists and Streaming Quote Traders (''SQTs'') and orders of Registered Options Traders (''ROTs'') within 30 days of the date of the determination not to deploy.

[4] *See* letter from Richard S. Rudolph, Director and Counsel, Legal Department, Phlx to Deborah Lassman Flynn, Assistant Director, Division, Commission, dated January 28, 2004 (''Amendment No. 2''). In Amendment No. 2, the Exchange proposes to amend the rule text to clarify that Phlx XL, if approved, would be deployed not later than 10 days after Commission approval.

[5] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO-X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. *See* Exchange Rule 1080.

[6] *See* File No. SR-Phlx-2003–59 and Amendments No. 1 and 2 thereto, which describes the proposed functionality and rule changes associated with Phlx XL, and is currently pending with the Commission (''Phlx XL Proposal'').

deployment of the Exchange's proposed new options trading platform, Phlx XL.

a. Background

In November 2002, the Commission approved proposed amendments to Exchange Rules 1080 and 1014 adopting a feature of AUTOM known as ''ROT Access'' to: (i) allow ROTs and specialists to enter price improving limit orders via electronic interface with AUTOM, subject to certain contingencies, and (ii) set forth special crowd priority, parity and trade allocation rules that would only apply to price-improving ROT and specialist price improving orders entered via electronic interface with AUTOM.[7]

b. The Modified System

Currently, under ROT Access, inbound orders eligible for execution against price-improving ROT limit orders entered via the electronic interface and orders matching such price-improving limit orders are manually executed by the specialist. The Exchange represented in its rules relating to ROT Access that the Exchange would modify its AUTO–X system not later than January 2004, so that it would automatically execute eligible incoming orders against Phlx Price Improving ROT and specialist price improving orders and orders matching such price-improving orders entered via electronic interface with AUTOM resting on the limit order book (the ''Modified System''). Pursuant to Commentary .04 to Phlx Rule 1080, the Exchange would deploy the Modified System over a 15-month period.

Since the adoption of that provision, the Exchange has commenced the technological development of, and filed for Commission approval of rules relating to, its electronic trading platform, ''Phlx XL,'' on a six-month pilot basis.[8] The Exchange represents to the Commission that: (i) Phlx XL, which would allow ROTs to stream competitive proprietary option quotations into the Exchange's system in certain options designated by the Options Committee as ''Streaming Quote Options,'' would represent the Exchange's permanent response to the Competitive Quoting Undertaking, and (ii) ROT limit orders placed electronically onto the limit order book via the electronic interface in Streaming Quote Options would be executed automatically, thus obviating the need for the Modified System for Streaming Quote Options (*i.e.*, those options traded on Phlx XL).

c. ROT Access and Phlx XL

Currently, ROTs are permitted by rule to enter electronic price improving limit orders (and orders matching such limit orders entered electronically by the specialist or other ROTs in the trading crowd) onto the limit order book via electronic interface with AUTOM, and are entitled to receive a special allocation in trades stemming from such price improving limit orders. Such price-improving limit orders must be for at least the lesser of the AUTO–X guarantee for the option (currently defined as the Exchange's disseminated size) or 20 contracts. Under the Phlx XL Proposal, ROTs would continue to be permitted under Exchange Rule 1080(b)(i)(B) and Commentary .04 to that rule to place certain limit orders on the limit order book electronically.

Under the Phlx XL Proposal, the requirement that such limit orders be price-improving orders would be deleted. Instead, ROTs would be permitted to place limit orders, including Good-Till-Cancelled (''GTC'') orders, on the limit order book, regardless of whether such an order improves the then-prevailing Exchange market. This would apply to ROT limit orders entered onto the limit order book electronically in both Streaming Quote Options trading on Phlx XL, and in non-Streaming Quote Options that are not traded on Phlx XL. ROTs entering limit orders on the book in both Streaming Quote Options and non-Streaming Quote Options would be required to submit such orders with a size of at least 10 contracts. Respecting non-Streaming Quote Options (not traded on Phlx XL), inbound orders eligible for execution against such limit orders would be executed and allocated manually by the specialist, as they are today.

Respecting Streaming Quote Options, inbound AUTOM orders or electronic quotations eligible for execution against ROT orders entered into AUTOM via electronic interface by ROTs who elect not to stream proprietary quotations in such options would be automatically executed and would be allocated automatically pursuant to proposed Exchange rules relating to Streaming Quote Options.[9]

d. The Phlx XL Rollout and the Competitive Quoting Undertaking

Because the Exchange believes that Phlx XL will ultimately be deployed for all options traded on the Exchange floor-wide, the Exchange does not believe it is necessary or prudent to invest the resources required to deploy the Modified System described in current Rule 1080, Commentary .04, unless the Phlx XL trading platform ceases to be used by the Exchange for any reason (which the Exchange does not contemplate), or if the Exchange ultimately determines not to deploy the Phlx XL platform for all options. Because Phlx XL provides for the automatic execution of eligible incoming orders against ROT limit orders, the Exchange believes that it can satisfy the requirement of the Competitive Quoting Undertaking as it relates to the automatic execution of ROT limit orders upon the deployment of Phlx XL and as the Exchange successively introduces additional options to trade on that platform.

Contingent upon Commission approval of the proposed rules relating to Phlx XL, and the completion of system development, the Exchange would commence deployment of Phlx XL beginning with approximately 10 options, pursuant to the deployment schedule set forth in the Phlx XL Proposal.[10] The Exchange has not yet determined a floor-wide deployment date.

The Exchange, following the initial deployment of Phlx XL, would not be automatically executing inbound orders against ROT limit orders in options that are not traded on Phlx XL (thus not providing such automatic executions in all options). To ensure that the Exchange is in compliance with the Competitive Quoting Undertaking, the Exchange has filed this proposal.

The proposed rule provides that the Exchange would commence the automatic execution of ROT limit orders on the limit order book in options traded on Phlx XL within 10 days of the Commission's approval of the system, subject to the various extenuating circumstances described below.[11]

[7] *See* Securities Exchange Act Release No. 46763 (November 1, 2002), 67 FR 68898 (November 11, 2002) (''ROT Access Proposal''). According to Phlx, the ROT Access Proposal was submitted as a temporary solution in response to the *Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Sanctions*, Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File 3–10282 (the ''Order''), which requires, among other things, that the respondent exchanges, including the Phlx, adopt new, or amend existing, rules concerning its automated quotation systems which substantially enhance incentives to quote competitively and substantially reduce disincentives for market participants to act competitively (the ''Competitive Quoting Undertaking'').

[8] *See* Phlx XL Proposal, *supra* note 6.

[9] *Id.*

[10] *Id.*

[11] The automatic execution of eligible orders against ROT limit orders on the limit order book is a proposed functionality of Phlx XL. Thus, such automatic execution would be effective for those options traded on Phlx XL upon deployment of the Phlx XL platform.

i. If Phlx XL Is Not Deployed or Is Terminated for Any Reason

If the Exchange determines not to deploy Phlx XL or if the deployment of Phlx XL is terminated for any reason (which is not contemplated by the Exchange), then the Exchange would, within 30 days of such determination or termination, ensure that the AUTOM system automatically executes eligible incoming option orders against Phlx Price Improving ROT and specialist price improving orders and orders matching such price-improving orders entered via the electronic interface with AUTOM, consistent with the Modified System. The Exchange would identify the options subject to such automatic execution, and would cause all options to be subject to automatic execution by April 30, 2005.

ii. If Phlx XL Is Deployed For Less Than All Options

The proposed rule would further provide that, if the Phlx XL system is in operation on April 30, 2005, but less than all of the options traded on the Exchange are Streaming Quote Options (thus traded on Phlx XL), then the Exchange would, as of April 30, 2005, ensure that the AUTOM system automatically executes eligible incoming orders in options that are not then Streaming Quote Options against Phlx Price Improving ROT and specialist price improving orders, consistent with the original proposal for the Modified System.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[12] in general, and furthers the objectives of section 6(b)(5) of the Act,[13] in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade by enabling the Exchange to continue the development and deployment of Phlx XL while continuing to enhance the automatic execution of ROT limit orders on the limit order book which, as interpreted by Commission staff, forms a part of the requirements of the Competitive Quoting Undertaking.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–Phlx–2004–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hard copy or by e-mail, but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2004–01 and should be submitted by March 1, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities system, and protect investors and the public interest.[15]

The Commission believes that this proposed rule change should assist the Exchange by allowing it to focus its resources on the development and deployment Phlx XL, which, if approved by the Commission, will be its new electronic trading platform for options and its permanent response to the Competitive Quoting Undertaking. The instant proposal should help Phlx to avoid the duplication of technological efforts by allowing the Exchange to fulfill its Competitive Quoting Undertaking with the deployment of Phlx XL, which would occur within 10 days of Commission approval of the system. Thus, Phlx will be able to avoid altering the Modified System for compliance purposes while simultaneously developing a successor system, which would also be designed to fulfill the undertaking. The Exchange represents that Phlx XL would be designed to automatically execute eligible incoming option orders against orders placed electronically on the Exchange's limit order book by ROTs. The Exchange also represents that if the Phlx XL is either never deployed or deployed and subsequently terminated for any reason the Exchange would ensure that the AUTOM system, or any successor system, would include the functionality to automatically execute eligible incoming option orders against Phlx Price Improving ROTs' and specialists' price improving orders and orders matching such price-improving orders entered via the electronic interface with AUTOM within 30 days of the determination not to deploy or termination of Phlx XL. In addition, the Exchange would insure that the AUTOM system would provide the automatic execution functionality described above by April 30, 2005, if Phlx XL were not operable for all options traded on the Exchange by that date.

The Commission believes this proposed rule change, as amended, should allow Phlx to maximize the use of its resources in its efforts to comply with the Competitive Quoting Undertaking in a timely fashion as set forth in the Order. Further, the Commission notes that Phlx had previously committed to modify its Automatic Execution System (AUTO–X) no later than January 2004, and deploy the system over a 15-month period.[16] In the instant proposal, Phlx maintains its commitment to cause all options to be

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] See ROT Access Proposal, *supra* note 7.

subject to automatic execution by April 30, 2005 (*i.e.*, 15 months from January 2004), thus, the ultimate timetable that ROT Limit Orders in all options on the Exchange would be subject to automatic execution would be unchanged. Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,[17] for approving the proposed rule change, as amended, prior to the 30th 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,[18] that the proposed rule change (SR–Phlx–2004–01), as amended, 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. 04–2647 Filed 2–6–04; 8:45 am]

BILLING CODE 8010–01–P

[17] 15 U.S.C. 78s(b)(2).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement for Paradise-Wilson 500-kV Transmission System Upgrades

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR 1506.6), Section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR part 800) and the Tennessee Valley Authority (TVA) procedures for implementing the National Environmental Policy Act (NEPA). TVA will prepare an environmental impact statement (EIS) addressing the proposed construction and operation of a new 500-kilovolt (kV) transmission line and other transmission system upgrades in Kentucky and Tennessee. The proposed transmission line would extend from TVA's Paradise Fossil Plant in Muhlenberg County, Kentucky, to TVA's Wilson 500-kV Substation in Wilson County, Tennessee. Depending on the route, the proposed line could involve portions of Muhlenberg, Butler, Simpson, Warren, Logan, Allen, and Ohio Counties in Kentucky and parts of Robertson, Sumner, and Wilson Counties in Tennessee. Proposed transmission system upgrades include uprating 52 miles of TVA's Paradise-Montgomery 500-kV line from 2000 amps to 3000 amps and the replacement of conductors (*i.e.*, wires) on approximately 6 miles of TVA's Wilson-Gladeville 161-kV transmission line. In the EIS, TVA will evaluate the potential environmental impacts of the construction, operation, and maintenance of the new line and other system upgrades. As part of its EIS process, TVA will include public involvement on this proposal. Public comment is invited concerning both the scope of the EIS and environmental issues that should be addressed as a part of this EIS.

DATES: Comments on the scope and environmental issues for the EIS must be postmarked or e-mailed no later than March 26, 2004, to ensure consideration. Late comments will be considered if possible.

ADDRESSES: Written comments should be sent to James F. Williamson, Jr., Senior NEPA Specialist, Environmental Policy and Planning, Tennessee Valley Authority, WT 8C, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499. Comments may be e-mailed to *jfwilliamson@tva.gov*.

FOR FURTHER INFORMATION CONTACT: Hugh S. Barger, Environmental Engineer, Transmission/Power Supply, Tennessee Valley Authority, MR 4G–C, 1101 Market Street, Chattanooga, Tennessee 37402–2801, or telephone 1–800–362–4355. E-mail may be sent to *hsbarger@tva.gov*.

SUPPLEMENTARY INFORMATION:

Background

Peabody Energy Corporation plans to construct and operate the Thoroughbred Energy Campus, which would consist of a 1,500 megawatt power plant and mine complex, in northern Muhlenberg County, Kentucky. The Federal Power Act, as amended, requires operators of transmission systems to provide interconnection access to independent power generators. Peabody has requested interconnection to the TVA power transmission system and would use the TVA transmission system to distribute as much as half of the 1,500 megawatts of electric power generated by the Thoroughbred plant. Because interconnection service would be provided at Peabody's request, Peabody will reimburse TVA for the cost of necessary upgrades to its transmission system. The planned upgrades are necessary to accommodate Peabody's request and maintain the reliability of the TVA transmission system.

Project Description

In order to interconnect to the TVA transmission system, Peabody Energy Corporation would construct and operate a new 13-mile-long 500-kV transmission line from the Thoroughbred plant to the switchyard at TVA's Paradise Fossil Plant. To maintain reliability of its transmission system, TVA would construct and operate a new 500-kV transmission line from TVA's Paradise Fossil Plant to TVA's Wilson 500-kV substation located about 10 miles west of Lebanon, Tennessee. This proposed line would likely be about 90 miles long, depending on the final route alignment. Neither detailed routing studies nor line design studies have yet been conducted. The Kentucky portion of the proposed line route is primarily rural, consisting of forested areas, reclaimed strip mines, and scattered agriculture. The Tennessee portion contains developing suburban areas along with mixed agricultural land uses. The line would likely be built using self-supporting, laced steel towers on 175-foot-wide right-of-way. The structure type, right-of-way characteristics, and line length remain to be determined and could change when additional information is gathered.

Line construction would require removal of trees within the line right-of-way as well as any other nearby tall trees that would endanger the safe operation of the line.

Construction of the support structures would require the excavation of foundations for the tower legs. Cranes and other heavy equipment would be needed for tower construction and to pull the electrical conductors into place. After construction, the disturbed areas would be restored, and the right-of-way would be maintained periodically to control the growth of tall vegetation that could endanger the line. A detailed description of these activities, as well as applicable and appropriate environmental protection measures, will be provided in the EIS.

TVA also proposes to upgrade portions of two of its existing transmission lines. The 52-mile-long Paradise-Montgomery 500-kV transmission line would be uprated from 2000 amps to 3000s amps by re-tensioning the line (*i.e.,* removing excess slack to allow adequate clearance between the conductors and the ground). This line is located in Muhlenberg and Todd Counties, Kentucky, and in Montgomery County, Tennessee. Also, the electrical conductors would be replaced on about 6 miles of the Wilson-Gladeville 161-kV

transmission line in Wilson County, Tennessee. Acquisition of new right-of-way would not be necessary for either of these two upgrades.

After the completion of scoping, TVA will begin detailed line routing studies using maps, aerial photography, and other relevant data. When the studies have progressed sufficiently, potentially affected landowners will be contacted directly, and additional field surveys will be conducted.

Proposed Issues To Be Addressed

The EIS will contain descriptions of the existing environmental and socioeconomic resources within the area that would be affected by construction and operation of the proposed transmission line and upgrades. TVA's evaluation of potential environmental impacts to these resources will include, but will not necessarily be limited to, the potential impacts on water quality, aquatic and terrestrial ecology, endangered and threatened species, wetlands, aesthetics and visual resources, land use, historic and archaeological resources, and socioeconomic resources.

Alternatives

The results of evaluating the potential environmental impacts and other important issues identified in the scoping process, as well as engineering and economic considerations, will be used by TVA in selecting a preferred alternative. At this time, the range of alternatives TVA has identified for detailed evaluation include: (1) No action; and (2) construction and operation of a 500-kV transmission line from Paradise Fossil Plant to the Wilson 500-kV Substation, along with upgrades to existing lines. As additional analyses are conducted, TVA contemplates that alternative routes within the study corridor from Paradise to the Wilson Substation will be identified and evaluated in detail. The no action option is included as an alternative consistent with applicable regulations implementing NEPA. Because TVA is legally required to provide interconnection service to Peabody, the no action alternative is not a feasible option.

Scoping Process

Scoping, which is integral to the process for implementing NEPA, is a procedure that solicits public input to the EIS process to ensure that: (1) Issues are identified early and studied properly; (2) issues of little significance do not consume substantial time and effort; (3) the draft EIS is thorough and balanced; and, (4) delays caused by an inadequate EIS are avoided. TVA's NEPA procedures require that the scoping process commence soon after a decision has been reached to prepare an EIS in order to provide an early and open process for determining the scope of the analysis and for identifying the significant issues related to a proposed action. The range of alternatives and the issues to be addressed in the draft EIS will be determined, in part, from written comments submitted by mail or e-mail and comments presented orally or in writing at public meetings. The preliminary identification of reasonable alternatives and environmental issues in this notice is neither exhaustive nor final. The scoping process will include both interagency and public scoping. The public is invited to submit written comments or e-mail comments on the scope of this EIS no later than the date given under the **DATES** section of this notice.

TVA will conduct three public scoping meetings within the project study area. Dates and locations of the meetings are:

- February 24, 4–8 p.m.—Butler County High School, 2247 South Main Street, Morgantown, Kentucky.
- February 25, 3–7 p.m.—Franklin-Simpson County School Central Office, Board Room, 400 S. College Street, Franklin, Kentucky.
- March 2, 3–7 p.m.—Gallatin Civic Center, Room 101, 210 Albert Gallatin Avenue, Gallatin, Tennessee.

At each meeting, TVA management and project staff will present overviews of the proposed transmission line project and the EIS process, answer questions, and solicit comments on the issues that the public would like addressed in the EIS. These meetings will be publicized through notices in local newspapers, by TVA press releases to newspapers and radio stations in the study area, and on the TVA Web site (*http://www.tva.gov/environment/calendar.htm*).

The agencies to be included in the interagency scoping are U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Kentucky Department for Environmental Protection, Kentucky State Historic Preservation Officer, Tennessee Department of Environment and Conservation, Tennessee State Historic Preservation Officer, and other federal, state, and local agencies, as appropriate.

After consideration of the scoping comments, TVA will identify any additional alternatives and environmental issues to be addressed in the EIS. Following analysis of the environmental consequences of each alternative, TVA will prepare a draft EIS for public review and comment. Notice of availability of the draft EIS will be published by the Environmental Protection Agency in the **Federal Register**. TVA will solicit written comments on the draft EIS, and information about possible public meetings to comment on the draft EIS will be announced. TVA expects to release a draft EIS by fall 2004 and a final EIS by summer of 2006.

Dated: February 2, 2004.

Kathryn J. Jackson,

Executive Vice President, River System Operations and Environment.

[FR Doc. 04–2703 Filed 2–6–04; 8:45 am]

BILLING CODE 8120–08–U

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 645X)]

CSX Transportation, Inc.—Abandonment Exemption—in Floyd County, KY

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon approximately 9.1 miles of railroad between milepost COQ–1.0 at McNalley and milepost COQ–10.1 near East David, in Floyd County, KY. The line traverses United States Postal Service Zip Codes 41653 and 41616. The stations on the line are located at McNally, Samson, Joyce, Marie, Permele, Beverly Ann and David.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected

employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 10, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 FR 1152.29 must be filed by February 19, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 1, 2004, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Natalie S. Rosenberg, Senior Counsel, CSX Transportation, Inc., 500 Water Street, J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CSXT has filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by February 13, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by CSXT's filing of a notice of consummation by February 9, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: February 2, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–2702 Filed 2–6–04; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–107186–00]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking and temporary regulations, REG–107186–00 (TD 8942), Electronic Payee Statements (§§ 1.6041–2T, 1.6050S–1T, 1.6050S–2T, and 31.6051–1T).

DATES: Written comments should be received on or before April 9, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Electronic Payee Statements.

OMB Number: 1545–1729.

Regulation Project Number: REG–107186–00.

Abstract: In general, under these regulations, a person required to furnish a statement on Form W–2 under Code sections 6041(d) or 6051, or Forms 1098–T or 1098–E under Code section 6050S, may furnish these statements electronically if the recipient consents to receive them electronically, and if the person furnishing the statement (1) Makes certain disclosures to the recipient, (2) annually notifies the recipient that the statement is available on a Web site, and (3) provides access to the statement on that Web site for a prescribed period of time.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individual or households.

Estimated Number of Responses/Recordkeepers: 28,449,495.

Estimated Average Annual Burden Per Response/Recordkeeper: 6 minutes.

Estimated Total Annual Reporting/recording Hours: 2,844,950.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 3, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–2723 Filed 2–6–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 98–19

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 98–19, Exceptions to the notice and reporting requirements of section 6033(e)(1) and the tax imposed by section 6033(e)(2).

DATES: Written comments should be received on or before April 9, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Exceptions to the notice and reporting requirements of section 6033(e)(1) and the tax imposed by section 6033(e)(2).

OMB Number: 1545–1589.

Revenue Procedure Number: Revenue Procedure 98–19.

Abstract: Revenue Procedure 98–19 provides guidance to organizations exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 on certain exceptions from the reporting and notice requirements of section 6033(e)(1) and the tax imposed by section 6033(e)(2).

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, not-for-profit institutions and farms.

Estimated Number of Organizations: 15,000.

Estimated Average Time Per Organizations: 10 hours.

Estimated Total Annual Recordkeeping Hours: 150,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 3, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–2724 Filed 2–6–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8734

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8734, Support Schedule for Advance Ruling Period.

DATES: Written comments should be received on or before April 9, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Support Schedule for Advance Ruling Period.

OMB Number: 1545–1836.

Form Number: 8734.

Abstract: Form 8734 is used by charities to furnish financial information that Exempt Organization Determinations of IRS can use to classify a charity as a public charity.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 16,000.

Estimated Time Per Respondent: 34 hours, 19 minutes.

Estimated Total Annual Burden Hours: 549,120.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid OMB control number.

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 3, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–2725 Filed 2–6–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0600]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to request an informal review of veterans' denied healthcare benefits claims.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 9, 2004.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ann.bickoff@mail.va.gov*. Please refer to ''OMB Control No. 2900–0600'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Regulation for Reconsideration of Denied Claims.

OMB Control Number: 2900–0600.

Type of Review: Extension of a currently approved collection.

Abstract: The purpose of this data collection is to provide a vehicle to request an informal review of veterans whose healthcare benefit claims were denied. Veterans who disagree with the initial decision denying their claim in whole or in part may obtain reconsideration by submitting a request in writing within one year of the date of the initial decision. The request must state why the decision is in error and include any new and relevant information not previously considered. This process reduces both formal appeals and allows decision making to be more responsive to veterans using the VA healthcare system.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 50,826 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 101,652.

Dated: January 26, 2004.

By direction of the Secretary:

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 04–2685 Filed 2–6–04; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
February 9, 2004

Part II

Office of Personnel Management

5 CFR Part 591

Cost-of-Living Allowances (Nonforeign Areas); Methodology Changes; 2002 Nonforeign Area Cost-of-Living Allowance Survey Report: Caribbean and Washington, DC, Areas; Proposed Rule and Notice

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206–AK29

Cost-of-Living Allowances (Nonforeign Areas); Methodology Changes

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing technical changes in the methodology used to determine nonforeign area cost-of-living allowances (COLAs). The changes would correct minor drafting errors; provide consistent treatment of sale prices; allow the use of non-housing price data collected on St. John, U.S. Virgin Islands; correct and clarify the definition of COLA survey areas; and allow a one-time prospective index adjustment for the Caribbean and Alaska areas concurrent with the effective date of any COLA rate changes resulting from the 2004 Pacific COLA surveys. OPM is proposing these changes in large part as the result of experience gained in the 2002 COLA surveys and upon various recommendations of the Survey Implementation Committee, the Technical Advisory Committee, and/or the St. Thomas/St. John COLA Advisory Committee.

DATES: Comments must be received on or before April 9, 2004.

ADDRESSES: Send or deliver written comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Strategic Human Resources Policy Division, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200; fax: (202) 606–4264; or email: *COLA@opm.gov.*

FOR FURTHER INFORMATION CONTACT: Donald L. Paquin, (202) 606–2838; fax: (202) 606–4264; or email: *COLA@opm.gov.*

SUPPLEMENTARY INFORMATION: Section 5941 of title 5, United States Code, authorizes the payment of cost-of-living allowances (COLAs) to employees of the Federal Government stationed in certain nonforeign areas outside the contiguous 48 States whose rates of basic pay are fixed by statute. Executive Order 10000, as amended, delegates to OPM the authority to administer nonforeign area COLAs and prescribes certain operational features of the program.

The Government pays nonforeign area COLAs to General Schedule, U.S. Postal Service, and certain other Federal employees in Alaska, Hawaii, Guam and the Commonwealth of the Northern Mariana Islands (CNMI), Puerto Rico, and the U.S. Virgin Islands. The Office of Personnel Management (OPM) conducts COLA surveys in each allowance area to determine whether, and to what degree, local living costs are higher than those in the Washington, DC, area. OPM sets the COLA rate for each area based on the results of these surveys.

On May 3, 2002, OPM published final regulations in the **Federal Register** (67 FR 22339) that significantly modified the current COLA survey methodology consistent with the settlement agreement in *Caraballo, et al.* v. *United States,* No. 1997–0027 (D.V.I.), August 17, 2000. (*Caraballo* was a class-action lawsuit in which the plaintiffs contested the methodology OPM used to determine COLA rates.) Later in 2002, OPM conducted COLA surveys in Puerto Rico, the U.S. Virgin Islands, and the Washington, DC, area, using the new methodology. OPM is publishing with these proposed regulations the complete ''2002 Nonforeign Area Cost-of-Living Allowance Survey Report: Caribbean and Washington, DC, Areas.''

While conducting the COLA surveys and analyzing the results, OPM became aware of technical errors in the newly implemented regulations. In addition, OPM received from the Survey Implementation Committee (SIC), the Technical Advisory Committee (TAC), and the St. Thomas/St. John COLA Advisory Committee recommendations for other technical changes. Collectively, the changes would (1) correct minor drafting errors; (2) provide consistent treatment of sale prices; (3) allow the use of non-housing price data collected on St. John, U.S. Virgin Islands; (4) correct and clarify the definition of COLA survey areas; and (5) allow a one-time prospective index adjustment for the Caribbean and Alaska areas concurrent with the effective date of any COLA rate changes resulting from the 2004 Pacific COLA surveys.

Minor Drafting Errors

OPM proposes to correct minor drafting errors. One of these relates to how OPM sets the COLA rate for an area as a whole when OPM combines data from multiple survey areas within the COLA area. For COLA areas with multiple survey areas, OPM uses the number of Federal employees in each survey area as weights to combine the data from each of the survey areas. This process is described in paragraph (b) of section 591.216, title 5, Code of Federal Regulations, but the description is not technically correct. The current regulation states that, to combine survey data for COLA areas that have multiple survey areas, OPM computes weighted average indexes at the primary expenditure group (PEG), major expenditure group (MEG), and overall level. However, OPM actually computes weighted average indexes at the item, PEG, MEG, and/or overall level, and OPM proposes to change 5 CFR 591.216(b) accordingly.

Another technical error relates to how OPM uses expenditure weights, which are derived from the Bureau of Labor Statistics (BLS) Consumer Expenditure Survey (CES). In both the COLA area and in the Washington, DC, area, OPM computes a price index by dividing the average price in the COLA area by the average price in the DC area. OPM uses CES expenditure weights to combine the price indexes in a three-step process. Section 591.222 of the COLA regulations describes that process, but the description of the third step is incorrect. The regulations state that OPM produces an overall price index for the survey area. Instead, OPM produces an overall index for the COLA area. OPM's proposed change to 5 CFR 591.222 will correct this.

Consistent Treatment of Sale Prices

One of the changes OPM is proposing relates to the prices it collects in the survey. Section 591.213 of the regulations prescribes the prices OPM collects, which include sale prices. The survey of sale prices is a change from the way OPM priced items in previous surveys. OPM adopted the survey of sale prices pursuant to the *Caraballo* settlement.

The regulation provides for certain exceptions in the collection of sale prices, including going-out-of-business prices and area-wide distress sale prices. The reason OPM does not collect these prices is because unlike most sale prices, which are recurring, going-out-of-business prices and area-wide distress prices are one-time events. In the case of going-out-of-business prices, for example, if OPM conducted the survey earlier, the business would not be discounting its prices, and if OPM conducted the survey later, the business would not be surveyed because it would not be in business.

During the 2002 COLA surveys, OPM encountered clearance prices on items that were being discontinued and/or were seasonal. OPM concluded these clearance prices were similar to going-out-of-business prices. If OPM had conducted the survey earlier, the item would not have been offered as a discontinued item, and if OPM had conducted the survey later, the item would not have been available.

Furthermore, if OPM were to use clearance prices, it would be difficult or impossible to time the surveys to collect prices when the same items are in clearance in all areas.

OPM consulted with the Survey Implementation Committee concerning this issue. The SIC was established under the *Caraballo* settlement and is composed of representatives of the parties in *Caraballo.* The SIC is advised by the Technical Advisory Committee, which was also established under the *Caraballo* settlement and is composed of three economists with expertise in living-cost comparisons. The TAC agreed that clearance prices were similar to going-out-of-business prices and that if clearance prices were used, survey timing would be compromised. Therefore, SIC and the TAC concurred with OPM that clearance prices should not be used, and OPM proposes to amend 5 CFR 591.213(b) to include clearance prices in the list of prices that OPM does not collect.

St. John Non-Housing Price Data

OPM is proposing to amend the definition of the St. Thomas/St. John, U.S. Virgin Islands survey area to allow the survey of non-housing price data on St. John. The St. Thomas/St. John COLA Advisory Committee (CAC) recommends the change. Current regulations provide that OPM only surveys housing data on St. John.

As provided by 5 CFR 591.240, OPM established CACs in Puerto Rico and in the U.S. Virgin Islands prior to the 2002 survey. Each CAC is composed of agency and employee representatives from the survey area and representatives from OPM, and one of the principal functions of the CACs is to advise and assist OPM in planning COLA surveys. In planning the St. Thomas/St. John survey, the CAC for that area recommended that OPM survey selected establishments on the island of St. John and include that data with the St. Thomas data. OPM regulations provide for the survey of housing on St. John but not for the collection of non-housing data. OPM agreed to conduct a test survey on St. John and collected data from the establishments that the CAC identified for the 2002 survey. OPM used the St. John data on a test basis with the St. Thomas data by weighting each island's price data by the number of Federal employees stationed on the island. OPM found it was feasible to collect and use these data in the manner described and believes it is appropriate to continue to survey St. John in future surveys. Therefore, OPM is proposing to change the definition of the St. Thomas/St. John survey area in 5 CFR 591.215(a) accordingly.

Other Survey Area Definitions

OPM is proposing changes and clarification to other survey area definitions. During the 2002 survey, OPM discovered that some of the geographic definitions of the survey areas in 5 CFR 591.215(a) were incomplete. For example, the Washington, DC, area is defined as specific cities and counties, but consistent with OPM's practice in previous surveys, OPM surveys a few items in areas outside this geographic boundary. For example, OPM surveys the price of air travel from all three airports in the Washington, DC, area: Ronald Reagan Washington National Airport, Washington Dulles International Airport, and Baltimore/Washington International Airport (BWI). OPM also surveys the price of a 5-mile taxi ride originating at these airports. Both Dulles and BWI are outside the geographic boundary shown in section 591.215(a). Nevertheless, these airports are commonly used by residents of the DC area for air travel.

OPM reviewed all of the survey area definitions in consultation with the SIC and TAC and found that other area definitions were inaccurate or incomplete. Therefore, OPM proposes technical changes in the survey area boundary definitions in 5 CFR 591.215(a) to expand the definition of the DC area to allow the survey of selected items in additional geographic locations and to incorporate the recommendations of the SIC and TAC. OPM also proposes a related change in the definition of the Washington, DC, area in 5 CFR 591.201.

Adjustment To Reflect Augmented Housing Data

OPM is proposing a change to allow OPM to make a one-time prospective adjustment in the COLA index based on additional housing data that OPM anticipates collecting by the end of next year's surveys. The SIC and the TAC recommend this change because shelter is the single most important COLA survey item in terms of its expenditure weight and because OPM is accumulating additional housing data and experience analyzing such data during the first survey cycle, *i.e.*, the first 3 years of COLA surveys under the new methodology that OPM adopted pursuant to the *Caraballo* settlement. OPM concurs with the SIC and TAC recommendation.

Under the new methodology, OPM surveys the COLA areas once every 3 years on a rotating basis but surveys the DC area, which is the base or reference area, every year. The TAC recommends that OPM pool the DC area rental data across years, updating previous years' rental data as appropriate, and thereby increasing the quantity of DC area data. Because shelter price comparisons that use this larger data base might be different from those that use each year's data separately, the TAC and the SIC recommend a one-time prospective COLA index adjustment based on housing data analyses.

In addition, OPM is currently examining the feasibility of collecting additional rent and rental equivalence information in a cost effective manner for research purposes. Under the *Caraballo* settlement, the parties agreed to adopt a rental equivalence approach similar to the one BLS uses for the Consumer Price Index. Rental equivalence compares the shelter value (rental value) of owned homes rather than total owner costs because the latter are influenced by the investment value of the home (*i.e.*, influenced by what homeowners hope to realize as a profit when they sell their homes). As a rule, living-cost surveys do not compare how consumers invest their money.

Currently, OPM surveys rents and uses that as a surrogate for rental equivalence. The SIC and TAC recommend that OPM research and compare market rents and homeowner estimated rents for comparable dwellings. If the research proves feasible and the results are available, the TAC recommends that OPM consider using these results in the one-time adjustment as well. The proposed change to 5 CFR 591.224 would allow such an adjustment.

Executive Order 12866, Regulatory Review

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

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, the Office of Personnel Management proposes to amend subpart B of 5 CFR Part 591 as follows:

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

1. The authority citation for subpart B of 5 CFR part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 Comp., p. 792; and E.O. 12510, 3 CFR, 1985 Comp., p. 338.

2. In § 591.201, revise the definition of ''Washington, DC, area or DC area'' to read as follows:

§ 591.201 Definitions.

In this subpart—

* * * * *

Washington, DC, area or DC area means the District of Columbia; Montgomery County, MD; Prince Georges County, MD; Arlington County, VA; Fairfax County, VA; Prince William County, VA; and the independent cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park, Virginia; and in the context of certain survey items, these jurisdictions and additional geographic locations beyond these jurisdictions.

3. In § 591.213, revise paragraph (b)(1) to read as follows:

§ 591.213 What prices does OPM collect?

* * * * *

(b) * * *

(1) OPM does not collect coupon prices, clearance prices, going-out-of-business prices, or area-wide distress sale prices.

* * * * *

4. In § 591.215, revise paragraph (a) to read as follows:

§ 591.215 Where does OPM collect prices in the COLA and DC areas?

(a) *Survey areas.* Each COLA area has one survey area, except Hawaii County, HI, and the U.S. Virgin Islands COLA areas. Hawaii County has two survey areas: the City of Hilo and the Kailua-Kona area. The U.S. Virgin Islands also has two survey areas: the Island of St. Croix and the Islands of St. Thomas and St. John. The Washington, DC, area has three survey areas: the District of Columbia, the Maryland suburbs of the District of Columbia, and the Virginia suburbs of the District of Columbia. OPM collects non-housing data throughout the survey area; and for selected items such as golf, snow skiing, and air travel, OPM collects non-housing data in additional geographic locations. OPM may collect housing data throughout the survey area or in specific housing data collection areas. The following table shows the survey areas:

SURVEY AND DATA COLLECTION AREAS

COLA areas and reference areas	Survey area
Anchorage	City of Anchorage.[1]
Fairbanks	Fairbanks/North Pole area.[1]
Juneau	Juneau/Mendenhall/Douglas area.[1]
Rest of Alaska	*See* paragraph (c) of this section.
Honolulu	City and County of Honolulu.
Hawaii County	City of Hilo, Kailua-Kona area.
Kauai	Kauai Island.
Maui	Maui Island.
Guam & CNMI	Guam.
Puerto Rico	San Juan/Caguas area and eastern Puerto Rico.[2]
U.S. Virgin Islands.	St. Croix, St. Thomas/St. John area.[2]
Washington, DC—DC.	District of Columbia.[1]
Washington, DC—MD.	Montgomery County and Prince Georges County.[1]
Washington, DC—VA.	Arlington County, Fairfax County, Prince William County, City of Alexandria, City of Fairfax, City of Falls Church, City of Manassas, and City of Manassas Park.[1]

[1] For selected items, such as golf, snow skiing, and air travel, these survey areas include additional geographic locations beyond these jurisdictions.

[2] OPM collects housing data in St. John and eastern Puerto Rico. OPM may also collect non-housing data from selected outlets in St. John and combine such data with St. Thomas data as provided in § 591.216(b).

* * * * *

5. In § 591.216, revise paragraph (b) to read as follows:

§ 591.216 How does OPM combine survey data for the DC area and for COLA areas with multiple survey areas?

* * * * *

(b) *COLA areas with multiple survey areas.* OPM computes weighted average indexes at the item, PEG, MEG, and/or overall level by using the corresponding indexes and Federal employment weights from each survey area within the COLA area.

6. In § 591.219, revise paragraph (b) to read as follows:

§ 591.219 How does OPM compute shelter price indexes?

* * * * *

(b) OPM then uses these characteristics and rental prices and/or estimates in hedonic regressions (a type of multiple regression) to compute for each COLA survey area the price index for rental and/or rental equivalent units of comparable quality and size between the COLA survey area and the Washington, DC, area. Exception: OPM does not compute separate rental and/or rental equivalence price indexes for St. John or eastern Puerto Rico.

7. In § 591.222, revise paragraph (c) to read as follows:

§ 591.222 How does OPM use the expenditure weights to combine price indexes?

* * * * *

(c) *Step 3.* OPM repeats the process described in Step 2 at each level of aggregation within the PEG to produce a price index for the PEG, at the PEG level to produce an index for the MEG, and at the MEG level to produce the overall price index for the COLA area.

8. In § 591.224, revise paragraph (b) and add paragraph (c) to read as follows:

§ 591.224 How does OPM adjust price indexes between surveys?

* * * * *

(b) Paragraph (a) of this section applies beginning with the effective date of the results of the second survey conducted in Puerto Rico and the U.S. Virgin Islands under these regulations.

(c) Based on additional housing data that may be collected before the second survey conducted in Puerto Rico and the U.S. Virgin Islands, OPM will adjust as warranted the price indexes and COLA rates for Puerto Rico, the U.S. Virgin Islands, and the COLA areas in the State of Alaska. OPM will implement any such adjustments on a one-time basis on the effective date of the results of the first surveys conducted in Hawaii and Guam/CNMI under these regulations, and subject to § 591.228. OPM will publish such adjustments as provided in § 591.229.

[FR Doc. 04–2225 Filed 2–6–04; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

2002 Nonforeign Area Cost-of-Living Allowance Survey Report: Caribbean and Washington, DC, Areas

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This notice publishes the ''2002 Nonforeign Area Cost-of-Living Allowance Survey Report: Caribbean and Washington, DC, Areas.'' The Federal Government uses the results of these surveys to set cost-of-living allowance (COLA) rates for General Schedule, U.S. Postal Service, and certain other Federal employees in Alaska, Hawaii, Guam and the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. This report contains the results of the COLA surveys that the Office of Personnel Management conducted in Puerto Rico, the U.S. Virgin Islands, and the Washington, DC, area during the summer of 2002.

DATES: Comments on this report must be received on or before June 8, 2004.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Strategic Human Resources Policy Division, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200; fax: (202) 606–4264; or e-mail: *COLA@opm.gov.*

FOR FURTHER INFORMATION CONTACT: Donald L. Paquin, (202) 606–2838; fax: (202) 606–4264; or e-mail: *COLA@opm.gov.*

SUPPLEMENTARY INFORMATION: Section 591.229 of title 5, Code of Federal Regulations, requires the Office of Personnel Management (OPM) to publish nonforeign area cost-of-living allowance (COLA) survey summary reports in the **Federal Register**. We are publishing the complete ''2002 Nonforeign Area Cost-of-Living Allowance Survey Report: Caribbean and Washington, DC, Areas'' with this notice. This report contains the results of the COLA surveys OPM conducted in Puerto Rico, the U.S. Virgin Islands, and the Washington, DC, area during the summer of 2002.

OPM published final regulations on May 3, 2002, (at 67 FR 22339) that significantly modified the previous COLA survey methodology consistent with the settlement agreement in *Caraballo, et al.* v. *United States,* No. 1997–0027 (D.V.I.), August 17, 2000. *Caraballo* was a class-action lawsuit in which the plaintiffs contested the methodology OPM used to determine COLA rates. In the *Caraballo* settlement, the parties agreed that if the Government adopted and maintained certain changes in the COLA program, the plaintiffs would be forever barred from bringing suit over these issues. Exhibit A of the settlement agreement lists 26 ''Safe Harbor Principles'' that outline the changes to which the parties agreed. (The settlement agreement is available on OPM's Web site at *http://www.opm.gov/oca/cola.*)

The 2002 COLA surveys in Puerto Rico, the U.S. Virgin Islands, and the Washington, DC, area are the first that OPM conducted using the new methodology. The survey report that follows describes the methodology, calculations, and the results of these surveys.

Survey Results

Using an index scale with the Washington, DC, area living costs equal to 100, OPM computed index values of relative living costs in Puerto Rico and the U.S. Virgin Islands. Then, pursuant to the *Caraballo* settlement, OPM added an adjustment factor of 7.0 to the Puerto Rico index and 9.0 to the Virgin Islands index and rounded the results to the nearest whole percentage point. The results show that the existing COLA rates for Puerto Rico and the U.S. Virgin Islands (11.5 percent and 22.5 percent respectively) are above the levels indicated by the 2002 survey. However, pursuant to the *Caraballo* settlement, OPM will not reduce COLA rates in any nonforeign area until the effective date implementing the results of the Pacific surveys that are planned for 2004. OPM anticipates that the effective date of that final rule will be in mid-2005. At that time, OPM will reduce any COLA rates where reductions are warranted but not by more than 1 percent per year, as prescribed in 5 CFR 591.228(c).

Office of Personnel Management.

Kay Coles James,

Director.

2002 Nonforeign Area Cost-of-Living Allowance Survey Report: Caribbean and Washington, DC, Areas

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Executive Summary

The Government pays cost-of-living allowances (COLAs) to Federal employees in nonforeign areas in consideration of living costs significantly higher than those in the Washington, DC, area. The Office of Personnel Management (OPM) conducts living-cost surveys to set the COLA rates. The methodology for conducting these surveys is prescribed in regulation at subpart B of part 591 of title 5 of the Code of Federal Regulations.

This report provides the results of the COLA surveys that OPM conducted in the summer of 2002 in Puerto Rico, the U.S. Virgin Islands, and the Washington, DC, area. The report details OPM's comparison of living costs in Puerto Rico and the U.S. Virgin Islands with living costs in the Washington, DC, area.

For the surveys, OPM contacted about 900 outlets and collected approximately 5,100 prices on more than 300 items representing typical consumer purchases. OPM then combined the data

using consumer expenditure information developed by the Bureau of Labor Statistics. The final results are a series of living-cost indexes, shown in Table 1, that compare living costs in the surveyed areas to those in the Washington, DC, area. The index for the DC area (not shown) is 100.00 because it is, by law, the reference area. The indexes for Puerto Rico and the U.S. Virgin Islands shown in Table 1 include the adjustment factor prescribed at 5 CFR 591.227.

TABLE 1.—FINAL LIVING-COST COMPARISON INDEXES

Allowance area	Index
Puerto Rico	103.60
U.S. Virgin Islands	121.44

1. Introduction

1.1 Report Objectives

This report provides the results of the 2002 (*i.e.*, ''Caribbean'') nonforeign area cost-of-living allowance (COLA) surveys that OPM conducted in the summer of 2002. (Appendix 1 lists previous survey reports and their publication dates.) In addition to providing these results, this report describes how OPM prepared for and conducted the survey and how it analyzed the results. The results show comparative living-cost differences between the Caribbean areas, *i.e.*, Puerto Rico and U.S. Virgin Islands (USVI), and the Washington, DC, area. By law, Washington, DC, is the base or ''reference'' area for the COLA program.

1.2 New COLA Methodology

The Caribbean surveys are the first that OPM conducted using the new methodology that OPM adopted pursuant to the stipulation of settlement in *Caraballo, et al.* v. *United States*, No. 1997–0027 (D.V.I), August 17, 2000. *Caraballo* was a class-action lawsuit in which the plaintiffs contested the methodology OPM used to determine COLA rates. In the *Caraballo* settlement, the parties agreed that if the Government adopted and maintained certain changes in the COLA program, the plaintiffs would be barred from bringing suit over these issues. The complete stipulation for settlement is on OPM's Web site at *http://www.opm.gov/oca/cola/ html/cola-settlement.htm*.

Before the settlement, the parties entered into a memorandum of understanding under which they engaged in a cooperative process to study living-cost and compensation issues. The research was exhaustive and covered essentially all aspects of the COLA program. A summary of that research is available on OPM's Web site at *http://www.opm.gov/oca/COLA/html/cola-n.htm.*

Exhibit A of the *Caraballo* settlement agreement lists 26 ''Safe Harbor Principles'' that outline the changes to which the parties agreed. These principles formed the basis for a new COLA methodology, which OPM incorporated into its regulations. In developing these regulations, OPM consulted with the Survey Implementation Committee, which was established under the *Caraballo* settlement and is composed of representatives of the parties in *Caraballo*. The Survey Implementation Committee in turn consulted with the Technical Advisory Committee, which was also established under the *Caraballo* settlement and is composed of three economists with expertise in living-cost comparisons. OPM published the new COLA regulations in the **Federal Register** as proposed on November 9, 2001 (66 FR 56741) and as final on May 3, 2002 (67 FR 22339).

1.3 Significant Methodological Changes

In the proposed rule, OPM described in detail the regulatory changes that it made to incorporate the new methodology. Among these are the following:

—OPM conducts the surveys in the COLA areas on a rotational basis once every 3 years and in the Washington, DC, area, which is the reference area, every year. Beginning after the first 3 survey years, OPM adjusts the price index for each area not surveyed during a given year based on the relative change in the Consumer Price Index (CPI) for the COLA area compared with the relative change in the CPI for the Washington, DC, area. Under the previous methodology, OPM surveyed every COLA area and the DC area annually (except during the period of negotiation of the *Caraballo* settlement agreement).

—OPM surveys rents and detailed characteristics of rental units in each area to compute relative shelter costs. OPM uses these data and regression analyses to estimate the cost of shelter for both owners and renters. Under the previous methodology, OPM surveyed rental prices and obtained data on home owner mortgage and maintenance costs.

—OPM surveys sale prices of specified items (with certain exceptions) in effect at the time of the survey. Under the previous methodology, OPM surveyed only non-sale prices.

—OPM uses a utility model to compute the energy requirements and cost to maintain the internal temperature of a standard home at a given temperature in each area. Under the previous methodology, OPM used local usage information provided by local utility companies.

—OPM uses estimated expenditure weights that reflect Washington, DC, area average spending patterns of households in central income groups as reported in tabulated Consumer Expenditure Survey (CES) data, published by the Bureau of Labor Statistics. Under the previous methodology, OPM estimated expenditures at three different income levels and weighted these together using Federal employment weights.

—OPM adds an adjustment factor to the index derived from the survey data to account for differences in need, availability of and access to goods and services, and quality of life between the COLA areas and the Washington, DC, area. The survey index plus the adjustment factor is the final price index for the COLA area. Under the previous methodology, OPM did not add adjustment factors to the living-cost index.

—OPM sets COLA rates by rounding the final living-cost index to the nearest whole percentage point. If COLA rate reductions are warranted, however, OPM limits such reductions to no more than one percentage point per year. Under the previous methodology, OPM set COLA rates to the nearest 2.5 percentage point, and reductions in COLA rates were limited only if caused by changes in the methodology, not relative changes in living costs.

—OPM involves employees in administering the COLA program. Before each survey, OPM establishes COLA Advisory Committees (CACs), which are described below.

2. Preparing for the Survey

2.1 COLA Advisory Committees

Before the Caribbean surveys, OPM established CACs in St. Croix, USVI, St. Thomas/St. John, USVI, and Puerto Rico. The *Caraballo* settlement provides for employee involvement in the administration of the COLA program, and in the previous two surveys under the COLA Partnership Pilot Project, OPM found it valuable to involve employee and agency representatives in planning and conducting the survey and reviewing the survey results.

Each CAC is composed of approximately 12 agency and employee representatives from the survey area and two representatives from OPM. The CACs' functions include:

—Advising and assisting OPM in planning COLA surveys;
—Providing or arranging for data collection observers during COLA surveys;
—Advising and assisting OPM in reviewing survey data;
—Advising OPM on its COLA program administration, including survey methodology;
—Assisting OPM in disseminating information to affected employees about the surveys and the COLA program; and
—Advising OPM on special situations or conditions, such as hurricanes and earthquakes, as they relate to OPM's authority to conduct interim surveys or implement some other change in response to conditions caused by a natural disaster or similar emergency.

2.2 Pre-Survey Meetings

To help OPM prepare for the COLA surveys, the CACs held 3-day meetings in each of the Caribbean areas. These were joint meetings of the CAC, Survey Implementation Committee (SIC), and Technical Advisory Committee (TAC). The CACs, SIC, and TAC reviewed the preliminary outlet and item lists that OPM had developed for the surveys. The committee members researched the outlets and availability and appropriateness of the items in each area and made recommendations to OPM concerning the survey. OPM incorporated these in its survey design.

OPM found the work of the CACs, SIC, and TAC in the Caribbean to be extremely helpful and informative. The SIC and TAC's knowledge about the *Caraballo* settlement, the new methodology, and the economic concepts underlying that methodology combined with the CACs' knowledge of the local area, the popularity of items and outlets, and other information about the COLA area were invaluable in helping OPM plan the survey. These joint CAC, SIC, and TAC meetings were particularly important because, under the Caraballo settlement, the SIC and TAC dissolve after the first 3 years of COLA surveys.

2.3 Survey Item Selection

As described above, OPM consulted with the CACs, SIC, and TAC as it selected survey items. OPM identified items to reflect a wide array of items consumers typically purchase. To determine what consumers purchase, OPM used the Bureau of Labor Statistics (BLS) 2000 Consumer Expenditure Survey (CES). OPM aggregated CES expenditures into the following nine major expenditure groups (MEGs):

—Food
—Shelter & Utilities
—Household furnishings and supplies
—Apparel
—Transportation
—Medical
—Recreation
—Education and Communication
—Miscellaneous

OPM further subdivided each MEG into primary expenditure groups (PEGs). In all, there were 45 PEGs. For example, OPM subdivided Food into the following nine PEGs:

—Cereals and Bakery Products
—Meats, Poultry, Fish, and Eggs
—Dairy Products
—Fresh Fruits and Vegetables
—Processed Foods
—Other Food at Home
—Nonalcoholic Beverages
—Food Away from Home
—Alcoholic Beverages

To select survey items, OPM chose a sufficient number of items to represent each PEG and reduce overall price index variability. To do this, OPM applied the following guidelines. Each survey item should be:

—Relatively important (*i.e.*, represent a fairly large expenditure) within the PEG;
—Relatively easy to find in both COLA and DC areas;
—Relatively common, *i.e.*, what people typically buy;
—Relatively stable over time, *e.g.*, not a fad item; and
—Subject to similar supply and demand functions.

In all, OPM selected 312 non-housing items for survey. Appendix 2 shows how OPM organized the CES data into MEGs and PEGs, identifies the Detailed Expenditure Categories (DECs) for which OPM chose survey items, and shows estimated DC area middle income annual consumer expenditures for each DEC and higher level of aggregations.

Appendix 3 lists the non-housing items that OPM surveyed and their descriptions. Each of these items is specifically described with an exact brand, model, type, and size whenever practical. Thus, OPM priced exactly the same items in both the COLA and DC areas. For example, OPM priced a 10.5-ounce can of Campbell's vegetable soup in both the COLA and DC areas because it is typical of canned soups and consumers commonly purchase it.

2.3.1 Special Considerations

Automobile Insurance: OPM was not able to compare exactly the same level of automobile insurance coverage in all areas. State and local jurisdictions regulate car insurance, and the coverage offered varies among the COLA areas and the Washington, DC, area. Therefore, OPM surveyed different levels of automobile insurance coverage in Puerto Rico as compared with the USVI. OPM, however, surveyed both levels of coverage, to the extent possible, in the Washington, DC, area. When OPM made the price comparisons, OPM based the comparison on comparable levels of coverage in the COLA survey area and in the DC area. Table 2 shows the coverage that OPM surveyed.

TABLE 2.—AUTOMOBILE INSURANCE COVERAGE

Coverage	Puerto Rico and DC area limits and deductibles	USIV and DC area limits and deductibles
Bodily Injury	$100,000/$300,000	$25,000/$30,000.
Property Damage	$25,000	$25,000.
Medical	$15,000	$5,000.
Uninsured Motorist*	$100,000/$300,000	$25,000/$30,000.
Comprehensive	$100 Deductible	$250 Deductible.
Collision	$250 Deductible	$500 Deductible.

*Not available in Puerto Rico or the Virgin Islands. OPM excluded the Uninsured Motorist cost from Washington, DC, area policies before computing the price index.

Health Insurance: It was not practical to compare the prices of exactly the same quality and quantity of health benefits insurance between the COLA and Washington, DC, areas because the same array of plans are not offered in

each area and a significant proportion of Federal employees in both the COLA and DC areas subscribe to plans that are not available nationwide. To compare the employee health benefit premium of these often highly different plans, OPM would have to adjust for differences in benefits and coverage. Research that the parties conducted prior to the *Caraballo* settlement indicated that this would not be feasible.

Therefore, OPM used the non-Postal Service employee's share of the Federal Employees Health Benefits premiums by plan for each plan offered in each area and obtained from OPM's Central Personnel Data File the number of Federal employees enrolled in each plan. As described in Section 4.2.2 below, OPM used these data to compute the average ''price'' of health benefits insurance for Federal employees in the COLA and DC areas.

Housing: For housing items, OPM surveyed rental rates for specific kinds or classes of housing but collected a much broader range of information about each housing unit. OPM surveyed the following classes of housing:

—Four bedroom, single family unit, not to exceed 3200 square feet.
—Three bedroom, single family unit, not to exceed 2600 square feet.
—Two bedroom, single family unit, not to exceed 2200 square feet.
—Three bedroom apartment unit, not to exceed 2000 square feet.
—Two bedroom apartment unit, not to exceed 1800 square feet.
—One bedroom apartment unit, not to exceed 1400 square feet.

For each rental unit surveyed, OPM obtained detailed information about the unit. Appendix 4 lists the types of information that OPM collected. OPM did not collect homeowner data, such as mortgage payments, maintenance expenses, or insurance. Under the *Caraballo* settlement, the parties agreed to adopt a rental equivalence approach similar to the one BLS uses for the Consumer Price Index. Rental equivalence compares the shelter value (rental value) of owned homes rather than total owner costs because the latter are influenced by the investment value of the home (*i.e.*, influenced by what homeowners hope to realize as a profit when they sell their homes). As a rule, living-cost surveys do not compare how consumers invest their money.

In the 2002 survey, OPM surveyed rents and used that as a surrogate for rental equivalence. In the coming year, OPM plans to conduct a special research to obtain additional rent and rental equivalence information to determine whether the approach OPM is currently using is appropriate.

Although OPM surveyed rental rates for the same classes of housing in each area, the type, style, size, quality, and other characteristics of each unit varied within each area and between the COLA and DC areas. As described in Section 4.2.5, OPM used hedonic regression analyses to hold these characteristics constant between the COLA and Washington, DC, area to make rental price comparisons.

2.4 Outlet Selection

Just as it is important to select commonly-purchased items and survey the same items in both the DC area and COLA areas, it is important to select outlets frequented by consumers and find comparable outlets in both the COLA and DC areas. To identify comparable outlets, OPM categorized outlets by type (*e.g.*, grocery store, convenience store, discount store, hardware store, auto dealer, and catalog outlet). For example, OPM surveyed grocery items at supermarkets in all areas because most people purchase their groceries at such stores and because supermarkets exist in nearly all areas. Selecting comparable outlets is particularly important because of the significant price variations that may occur between dissimilar outlets (*e.g.*, comparing the price of milk at a supermarket with the price of milk at a convenience store).

OPM used the above classification criteria and existing data sources, including previous COLA surveys, phone books, and various business listings, to develop initial outlet lists for the survey. OPM provided these lists to the CACs, SIC, and TAC and consulted with them on outlet selection. The committees helped OPM refine the outlet lists and identify other/additional outlets where local consumers generally purchase the items that OPM planned to survey. For example, OPM planned to survey various department store items, such as clothing, but there are no major department stores in the USVI. The St. Croix and St. Thomas/St. John CACs helped OPM identify quality clothing, shoe, and jewelry stores in the USVI to survey. OPM surveyed these outlets and compared their prices with prices from similar quality department stores in the Washington, DC, area. Also, at the CACs' recommendation, OPM used catalog pricing in both Puerto Rico and the USVI, particularly in the USVI because catalog shopping is relatively more popular there.

Whenever OPM used catalog prices, it also priced the same item by catalog in the DC area for comparative purposes. To ensure consistent catalog pricing, OPM used only current catalogs for all catalog survey items. OPM priced 8 items by catalog in Puerto Rico and in the DC area and priced 16 items by catalog in the USVI and the DC area. All catalog prices included any charges for shipping and handling and all applicable taxes.

In all, OPM surveyed prices from approximately 900 outlets. In the COLA survey areas, described below, OPM attempted to survey three popular outlets of each type, to the extent practical. For some outlet types, such as local phone service, there were not three outlets, and in some areas, particularly in the USVI, there were not a sufficient number of businesses to find three outlets of each particular type. This was not generally a problem in Puerto Rico, however. In the Washington, DC, area, OPM attempted to survey nine popular outlets of each type, three in each of the DC survey areas, also described below.

2.5 Geographic Coverage

Table 3 shows the COLA and DC survey area boundaries.

TABLE 3.—SURVEY AND DATA COLLECTION AREAS

COLA areas and reference areas	Survey area
Puerto Rico	San Juan/Caguas area and eastern Puerto Rico.*
U.S. Virgin Islands	St. Croix, St. Thomas/St. John area.*
Washington, DC—DC	District of Columbia.**
Washington, DC—MD	Montgomery County and Prince Georges County.**
Washington, DC—VA	Arlington County, Fairfax County, Prince William County, City of Alexandria, City of Fairfax, City of Falls Church, City of Manassas, and City of Manassas Park.**

*OPM collects housing data in St. John and eastern Puerto Rico. OPM may also collect non-housing data from selected outlets in St. John and combine such data with St. Thomas data as provided in § 591.216(b).

** For selected items, such as golf and air travel, these survey areas include additional geographic locations beyond these jurisdictions.

On St. Croix and St. Thomas, OPM surveyed businesses in essentially all of the major commercial areas. As recommended by the St. Thomas/St. John CAC, OPM also surveyed selected businesses on St. John. OPM surveyed rental rates throughout the USVI, selecting sample sizes for each island roughly in proportion to the number of General Schedule employees whose duty station is on the island and who receive COLA.

In Puerto Rico, OPM surveyed businesses in the major commercial areas in the greater San Juan-Caguas area. OPM surveyed rental rates in the San Juan-Caguas area and in the communities north and east of San Juan including communities in the Roosevelt Roads area. In selecting these communities and sample sizes of each, OPM used the results of the 1993–94 Federal Employee Housing and Living Patterns Survey. Among other things, that survey obtained information on where Federal employees lived.

OPM divides the Washington, DC, area into three survey areas: the District of Columbia, the DC suburban areas of Maryland, and the DC suburban areas of northern Virginia. For certain items, OPM surveys prices in areas beyond the counties and cities shown in the table above. For example, OPM surveyed the cost of air travel from Ronald Reagan Washington National Airport, Washington Dulles International Airport, and Baltimore/Washington International Airport (BWI). OPM also surveyed the price of a 5-mile taxi ride originating at these airports. Both Dulles and BWI, however, are outside the counties and cities shown in the above table. Nevertheless, these airports are commonly used by residents of the DC area for air travel.

OPM surveyed rental rates in the same three DC survey areas. As with the Puerto Rico survey, OPM used the results of the 1993–94 Federal Employee Housing and Living Patterns Survey to select communities within these areas and to determine the sample size for each community.

3. Conducting the Survey

3.1 Pricing Period

OPM collected data from late June 2002 through early November. OPM collected non-housing price data onsite in the USVI from June 24 through July 12, 2002, and in Puerto Rico from July 15 through August 2, 2002. OPM collected non-housing data in the DC areas beginning August 5 and completed most of the collection by mid-September 2002. OPM continued to check and collect non-housing prices on an as-needed basis through November 2002. OPM contracted for the collection of rental data. That data collection began in the Caribbean areas in mid-July and ended with the delivery of the data to OPM on November 8, 2002.

3.2 Non-Housing Price Data Collection

3.2.1 Data Collection Teams

In both the COLA and Washington, DC, areas, OPM central office staff collected non-housing price data. In the COLA areas, data collection observers designated by the local CAC accompanied the OPM data collectors. Data collection observers were extremely helpful to OPM and the survey process by advising and assisting the data collectors in contacting outlets, matching items, and selecting substitutes. The observers also advised OPM on other living-cost and compensation issues relating to their areas. OPM did not use data collection observers in the Washington, DC, area, but OPM made available to the CACs all of the DC area data it collected.

3.2.2 Data Collection Process

The data collector/observer teams obtained most of the data by visiting stores, auto dealers, and other outlets. The teams also priced items, such as insurance, tax preparation fees, bank interest, and private education tuition, by telephone. As noted above, OPM surveyed some items via catalog, including all shipping costs and any applicable taxes in the price. OPM also collected other items, such as sales tax rates and airline fares, from Web sites on the Internet.

For all items subject to sales and/or excise taxes, OPM added the appropriate amount of tax to the price for computing COLA rates. For some items, such as restaurant meals, tax rates varied by location.

The data collectors collected the price of the item at the time of the visit to the outlet. Therefore, with certain exceptions, the data collectors collected the sale price, if the item was on sale, and that was used in the COLA calculations. The exceptions include coupon prices, going-out-of-business prices, clearance prices, and area-wide distress sales, which OPM does not use because they are atypical and/or seasonal. OPM also does not collect automobile ''sale'' or negotiated prices. Instead, OPM obtains the sticker (*i.e.* non-negotiated) price for the model and specified options. The prices are the manufacturer's suggested retail price (including options), destination charges, additional shipping charges, appropriate dealer-added items or options, dealer mark-up, and taxes, including sales tax, licensing and title fees, road use tax, and an excise tax (''arbitrio'') in Puerto Rico.

3.3 Housing (Rental) Price Data Collection

OPM contracted for the collection of rental data. The contractor was Delta-21 Resources, Incorporated, a research organization with expertise in housing and rental data collection. Delta-21 collected data throughout the Caribbean and DC areas. These data included rental prices, comprehensive information about the size and type of dwelling, number and types of rooms, amenities, and other important aspects of the dwelling that might influence the rental price. Appendix 4 lists the data elements that the contractor collected.

The contractor identified units for rent from various sources, including rental property managers, realtor brokers, listing services, newspaper ads, grocery store bulletin boards, and casual drive-by observation. The contractor then visited each rental unit, took a photograph of the unit, and made a sketch of the floor plan based on exterior dimensions and shape. OPM made these data available to the CACs, including the photographs and sketches.

4. Analyzing the Results

4.1 Data Review

During and after the data collection process, the data collectors reviewed the data for errors and omissions. This involved reviewing the data item-by-item and comparing prices across outlets within an area to spot data entry errors, mismatches, and other mistakes.

After all of the data had been collected in both the COLA areas and Washington, DC, area, OPM staff again reviewed the data by item across all of the areas. One purpose was to spot errors not previously detected, but the principle reasons were to look at equivalent brands and substitute items.

An equivalent brand is one that has the same size, quality, and price as another brand for the same type of item. Despite the pre-survey research, OPM discovered after the survey that some of the brands thought to be equivalent were often priced differently within the same outlet across areas. For example, prior to the survey, OPM specified Post Raisin Bran and Kellogg's Raisin Bran as equivalent brands. During the post-

survey data review, however, OPM found that within the same outlet the regular price of one brand was usually higher than the price of the other brand. Therefore, OPM concluded that the cereals were not equivalent in price; and during the post-survey review, OPM decided to use only the Post Raisin Bran prices.

A substitute is an item that is similar but does not exactly match the item description of the specified survey item. For example, OPM specified an Egg McMuffin Value Meal as an item to survey as a Fast Food Breakfast. The data collectors in Puerto Rico, however, discovered that McDonald's in the San Juan area do not sell Egg McMuffins. So, the data collectors priced a Ham, Egg, and Cheese Bagel Value meal as a substitute. OPM then priced both types of breakfast value meals in the DC area and used the Egg McMuffin Value Meal prices for the USVI and DC area comparison and the Bagel Value Meal prices for the Puerto Rico/DC area comparison.

4.2 Special Price Computations

After OPM completed its data review, it was essentially ready to begin the price averaging process described in section 4.3. First, however, OPM had to make special price computations for five survey items: K–12 private education, Federal Employees Health Benefits premiums, energy utility prices, and rental prices. For each of these, OPM used special processes to calculate appropriate values for each survey area.

4.2.1 K–12 Private Education

One of the items OPM surveyed is the average annual tuition for private education, grades K–12 in each area. Generally, tuition rates varied by grade level, so OPM computed an overall average tuition ''price'' for each school surveyed by averaging the tuition rates grade-by-grade. Section 4.4.2 below describes the additional special adjustments OPM applied to these ''prices'' in the price comparison process.

4.2.2 Health Insurance

As noted in Section 2.3.1, OPM surveyed the non-Postal employee's premium for the various Federal Employees Health Benefit plans offered in each survey area. Using enrollment information from OPM's Central Personnel Data File (CPDF), OPM computed two weighted average premium costs—one for self-only coverage and another for family coverage—for Federal white-collar employees in each of the COLA areas and the Washington, DC, area. As shown in Table 4, OPM then computed an overall weighted average premium for each survey area by applying the number of white-collar Federal employees nationwide enrolled in self-only and family plans. OPM used these overall weighted average premiums as ''prices'' in the price averaging process described in section 4.3 below.

TABLE 4.—2002 AVERAGE FEHB PREMIUMS FOR FULL-TIME PERMANENT EMPLOYEES—EMPLOYEES' SHARE FOR NON-POSTAL EMPLOYEES

Location	Self premium	Family premium	Bi-weekly weighted average premium	Annual weighted average premium
Puerto Rico	$23.47	$49.94	$39.85	$1,039.66
USVI	$43.77	$92.72	$74.05	$1,931.91
DC Area	$37.12	$84.96	$66.72	$1,740.68
50 States Enrollment	571,014	926,439		
Percent	38.13	61.87		

4.2.3 Water Utilities

OPM surveyed water utility rates in each of the COLA and Washington, DC, survey areas. In the USVI, where rainwater cisterns are widely used, OPM obtained water utility rates only for customers who are on municipal water systems. To compute the ''price'' of water utilities, OPM assumed that the average monthly water consumption in each area was 7,600 gallons. This is consistent with the consumption amount OPM used in the previous COLA survey. OPM used this quantity along with the rates charged to compute the average monthly water utility cost by survey area. OPM used these average monthly costs as ''prices'' in the price averaging process described in section 4.3 below.

4.2.4 Energy Utilities Model

For energy utilities (*i.e.*, electricity, gas and oil), OPM collected from local utility companies and suppliers in each of the COLA and DC survey areas the price of various energy utilities used for lighting, cooking, heating, cooling, and other household needs. In previous surveys, OPM also obtained average local household energy consumption and used this information along with the prices surveyed to compute annual utility costs. A shortcoming of this approach was that usage varies among areas depending on several variables including climate, type of home construction, and type of heating and/or cooling technology (*e.g.*, central air conditioning versus window-unit air conditioning). Therefore, in the *Caraballo* settlement, the parties agreed to a new methodology for computing utility costs.

The new methodology uses a heating and cooling engineering model along with local home construction information and climatic data from the National Oceanic and Atmospheric Administration (NOAA) to determine how many kilowatt hours of electricity, cubic feet of gas, and/or gallons of fuel oil are needed to maintain a home at a constant ambient temperature in each area. Although some homes use additional heating and cooling technologies, such as wood, coal, kerosene, and solar energy, OPM did not price or include these in the calculations because, based on the results of the 1992–93 Federal Employee Housing and Living Patterns Survey, relatively few Federal employees use these as primary sources of energy in their homes.

For Puerto Rico and the USVI, OPM surveyed the price of electricity for heating, cooling, and other household energy utility needs because the Employee Survey indicated that was by far the most popular energy source. For the Washington, DC area, OPM surveyed the prices of electricity, natural gas, and fuel oil to compute home energy costs for all electric homes, gas heated homes, and fuel oil heated homes. OPM then used the results of the Federal Employee survey to compute a weighted average cost for each of the DC areas based on the relative usage of each type of heating energy source.

Table 5 shows the energy usage and utility costs by month for the Caribbean and DC areas. The energy usage for both Puerto Rico and the USVI is the same because the model assumed that home construction is comparable in both areas and assumed that the weather is the same because NOAA publishes Caribbean data only for Puerto Rico. Therefore, the model used these data for the USVI. The table shows for comparison purposes only the energy usage by month for an all-electric home in the DC area, although as noted above, the model actually computed utility costs for all electric, gas and electric, and oil and electric homes. OPM used the weighted annual costs shown in the bottom row of the table as ''prices'' in the price averaging process described in section 4.3.

TABLE 5.—2002 ENERGY UTILITY COSTS

Month	Caribbean areas			Washington, DC, area			
	KWH	Puerto Rico	USVI	KWH*	All electric	Gas and electric	Oil and electric
January	2318	$241.33	$366.10	3326	$238.29	$157.51	$171.41
February	2225	233.47	351.75	2688	194.20	122.49	142.59
March	2649	265.21	417.18	1812	133.66	95.64	108.20
April	2746	289.11	432.15	966	75.12	69.50	73.73
May	2980	345.82	468.26	1170	89.27	86.43	88.96
June	3086	346.27	484.62	1377	132.09	114.38	131.25
July	3197	354.48	501.75	1648	159.52	140.46	158.27
August	3226	335.89	506.23	1566	151.22	132.74	150.08
September	2938	315.63	461.78	1246	118.83	100.22	118.30
October	2921	321.60	459.16	975	88.21	69.82	86.41
November	2546	277.45	401.29	1797	132.62	95.63	107.63
December	2348	263.74	370.58	2797	210.21	140.22	153.37
Totals	33180	$3,590.00	$5,220.85	21368	$1,723.25	$1,325.04	$1,490.20
Relative Usage (in percent)	.....	100	100	.....	45	45	10
Wtd. Average	.....	$3,590	$5,220.85	.....	$1,520.75		

*DC area all electric usage. Shown only for comparison with Caribbean usage. OPM used DC area all electric KWH usage only for all electric homes. OPM used lower KWH usages for gas and oil homes.

4.2.5 Rental Data Hedonic Models

As discussed in Section 3.3, OPM hired a contractor to collect rental data, including rents and data about the characteristics of each rental unit. OPM hired another contractor, the Center of International and Interarea Comparisons (CIIC), to analyze the housing data and estimate relative rental rates and rental indexes. CIIC is well-known for its work in international price comparisons, and one of its co-directors of research is a member of the TAC. CIIC consulted closely with the TAC and the SIC in analyzing the rental survey results.

As prescribed by OPM regulations and the *Caraballo* settlement, CIIC used hedonic regression analysis, which is a type of multiple linear regression analysis, to compare rents in the COLA areas with rents in the DC area. Multiple linear regression is used to determine how the dependent variable (in this case rent) is influenced by the independent variables (in this case the characteristics of the rental unit). CIIC found that only some of the housing characteristics that Delta-21 collected were statistically meaningful in determining what influenced rent in the Puerto Rico, USVI, and DC areas. CIIC tested various approaches using different characteristics and shared the results with the TAC. The TAC recommended one specific equation, which OPM adopted. This equation used the independent variables listed below, although some of the variables were ''crossed'' (*i.e.*, used interactively) with other variables:

Number of square feet
Number of bedrooms
Number of bathrooms
Number of years since built or extensively remodeled
Parking provided (yes/no)
Pets Allowed (yes/no)
Furnished (yes/no)
External condition (good, average, poor)
Quality of Neighborhood (desirable, less desirable)
Unit Type 1 (a: high rise apartment, b: garden or in-home apartment, c: house)
Unit Type 2 (a: high rise, garden, or in-home apartment, b: house)
Area (St. Croix, St. Thomas/St. John, Puerto Rico, Washington, DC, area)

As is common in this type of analysis and as was done in the research leading to the *Caraballo* settlement, CIIC used semi-logarithmic regressions. The regression produces parameter estimates for each independent variable, including Area. When the regression uses the Washington, DC, area as the base, the regression produces parameter estimates for each of the COLA survey areas: St. Croix, St. Thomas/St. John, and Puerto Rico. The exponent of the Area parameter estimate (*i.e.*, when the estimate is converted from natural logarithms) multiplied by 100 (following the convention used to express indexes) yields the Area's rent index. This index reflects the difference in rents for the COLA survey area relative to the Washington, DC, area, while (in effect) holding other significant housing characteristics constant.

The TAC recommended a technical adjustment to the above calculations to correct for a slight bias caused by the use of logarithms. The exponent of the average of the logarithms of a series of numbers is always less than the average of the numbers. Therefore, at the TAC's recommendation, OPM added one-half of the standard deviation of the Area parameter estimate before converting from natural logarithms. (See Arthur Goldberger, ''Best Linear Unbiased Prediction in the Generalized Linear Regression Model,'' *Journal of the American Statistical Association*, 1962.) Table 6 shows the resulting rental indexes. OPM used these indexes as ''prices'' in the price averaging process described in section 4.3.

TABLE 6.—RENT INDEXES

Area	Rent index
Puerto Rico	65.52
St. Croix, USVI	67.50
St. Thomas/St. John, USVI	84.22
Washington, DC, Area	*100.00

*By definition, the index of the base area is always 100.00.

Appendix 5 shows the regression equation in SAS code and the regression results. (SAS is a proprietary statistical analysis computer software package.) The TAC recommended that OPM review the issue of which equation to use and how to choose among equations as additional rental data become available during the Alaska and Pacific COLA surveys. OPM plans to do this.

4.3 Averaging Prices by Item and Area

After OPM collected, reviewed, and made special adjustments as required to the data, OPM averaged the prices for each item by COLA survey area. For example, OPM priced canned soup at three different grocery stores on St. Croix, then averaged these prices to compute a single average price for canned soup on St. Croix. If the OPM data collectors reported more than one price for a particular item within the same outlet (*e.g.*, for equivalent items as described in Section 4.1 above), OPM used the lowest price by item by outlet to compute the average. (The concept is that if the item and brands are equivalent, consumers will choose the one with the lowest price.) OPM repeated this averaging process item-by-item and area-by-area.

4.3.1 Special St. Thomas/St. John Computations

For St. Thomas and St. John, OPM applied an additional step. As noted in Section 2.5 above, the St. Thomas/St. John CAC recommended that OPM survey and use non-housing price data from selected outlets on St. John. OPM did this and computed average prices by item on St. John. OPM then combined these St. John average prices with St. Thomas average prices on an item-by-item basis to compute a St. Thomas/St. John weighted average price for each item found in both areas. For weights, OPM used the number of General Schedule (GS) employees with duty stations on St. John and with duty stations on St. Thomas expressed as a percentage of the GS employment on St. Thomas and St. John combined. Table 7 shows the weights.

TABLE 7.—ST. THOMAS AND ST. JOHN EMPLOYMENT WEIGHTS

Area	GS Employment	Weight (percent)
St. Thomas, USIV	224	79.7
St. John, USVI	57	20.3
Total	281	100.00

4.3.2 Computing DC Area Average Prices

For Washington, DC, area prices, OPM first averaged prices within each of the three DC survey areas described in Section 2.5. Then OPM computed a simple average of the three DC area survey averages to derive a single DC area average price for each survey item.

4.4 Computing Price Indexes

Next, OPM computed a price index for each of the items found in both the COLA survey area and in the Washington, DC, area. To do this, OPM divided the COLA survey area average price by the DC area average price and (following the convention used to express indexes) multiplied this by 100. For the vast majority of survey items, OPM's next step was to apply consumer expenditure weights. For a few items, however, OPM first applied special processes as described below.

4.4.1 Geometric Means

As described in Section 2.3, OPM selected survey items to represent selected detailed expenditure categories (DEC). Generally, OPM surveyed only one item per DEC, but in a few cases, OPM surveyed multiple items at a single DEC. In these cases, OPM computed the geometric mean of the price indexes to derive a single price index for the DEC. (A geometric mean is the *n*th root of the product of *n* different numbers and is often used in price index computations.) For example, OPM surveyed two prescription drugs—Amoxicillin and Prilosec. These two different prescription drugs represent a single DEC called ''prescription drugs.'' To derive a single price index for the DEC, OPM computed the geometric mean of the price index for amoxicillin and the price index for Prilosec.

4.4.2 Special Private Education Computations

As noted in Section 4.2.1, OPM surveyed K–12 private education in the COLA and DC areas and computed an average tuition ''price'' that reflected all grade levels. Because not everyone sends children to private school, OPM made an additional special adjustment for K–12 education by applying ''use factors.'' These use factors reflect the relative extent to which Federal employees make use of private education in the COLA and DC areas. For example, Table 8 below shows a use factor of 4.1066 for Puerto Rico. OPM computed this by dividing 54.33 percent (the percentage of Puerto Rico Federal employees with at least one child in a private school) by 13.23 percent (the percent of DC area Federal employees with at least one child in a private school). OPM obtained the percentages from the results of the 1992/93 Federal Employee Housing and Living Patterns Survey. This is the most current comprehensive data available. The table below shows the use factors and the adjusted price indexes for each COLA survey area.

TABLE 8.—SUMMARY OF PRIVATE EDUCATION USE FACTORS AND INDEXES

COLA survey area	Employees w/children in private schools		Use factor	Price index	Prince index w/use factor
	Local area	DC area			
Puerto Rico	54.33	13.23	4.1066	52.68	216.35
St. Croix	57.27	13.23	4.3288	62.14	268.97
St. Thomas	51.90	13.23	3.9229	48.05	188.50

4.5 Applying Consumer Expenditure Weights

Next, OPM applied consumer expenditure weights to aggregate price indexes by expenditure group. As noted in Section 2.3, OPM used the results of the BLS Consumer Expenditure Survey to estimate the amounts that middle income level consumers in the DC area spend on various items. By using expenditure weights, OPM was able to combine the price indexes according to their relative importance. For example, shelter is the most important expenditure in terms of the COLA survey and represents about 28 percent of total consumer expenditures. On the other hand, the purchase of newspapers at newsstands represents less that a 1/10th of 1 percent of total expenditures.

Beginning at the lowest level of expenditure aggregation (*e.g.*, sub-PEG), OPM computed the relative importance in percent of each survey item within the level of aggregation, multiplied the price index times its expenditure percentage, and summed the cross products for all of the items within the level of aggregation to compute a weighted price index for that level. OPM repeated this process at each higher level of aggregation (*e.g.*, PEG and MEG). Appendices 6 and 7 show these calculations for each COLA survey area at the PEG and MEG level.

The above process resulted in an overall price index for Puerto Rico (shown in Appendix 6) but not for the U.S. Virgin Islands, which has two separate COLA survey areas. To compute an overall price index for the U.S. Virgin Islands, OPM computed weights based on the number of GS employees stationed on St. Croix versus St. Thomas/St. John. OPM then multiplied each of the MEG indexes for St. Croix and St. Thomas/St. John by their respective GS employment weights and summed the cross products to produce an overall price index for the U.S. Virgin Islands. (See Appendix 7.) Table 9 shows the weights OPM used.

TABLE 9.—ST. CROIX, AND ST. THOMAS/ST. JOHN EMPLOYMENT WEIGHTS

Area	GS Employment	Weight (percent)
St. Croix, US VI	221	48.3
St. Thomas/St. John, USVI	281	51.7
Total	502	100.00

5. Final Results

To compute the overall living-cost index, OPM added to the price index a non-price adjustment factor. The parties in *Caraballo* negotiated these factors to reflect differences in living costs that might not be captured by the surveys, and OPM adopted these factors in regulation as part of the new methodology. The factors for Puerto Rico and the U.S. Virgin Islands are seven and nine index points respectively. The resulting living-cost indexes are shown in Table 10.

TABLE 10.—FINAL LIVING-COST COMPARISON INDEXES

Allowance area	Index
Puerto Rico	103.60
U.S. Virgin Islands	121.44

6. Post Survey Meetings

In December 2002, the CACs, SIC, and TAC held 1-day joint meetings in each of the Caribbean survey areas to review the survey results. OPM provided the committee members with various reports showing all the data that OPM collected, examples of how OPM reviewed these data, the data that OPM used in its analyses, and the results at the PEG and MEG level, as shown in Appendix 6. Members of the TAC explained how the rental data were analyzed and how OPM used expenditure weights to combine price indexes to reflect overall living costs. OPM described changes that it planned to incorporate in its regulations as a result of what it learned in the 2002 surveys. (See OPM's proposed rulemaking under 5 CFR part 591 published concurrent with this notice.)

In the St. Thomas/St. John CAC, SIC, and TAC meeting, OPM briefed the committees on the results of the St. John non-housing price test survey. The St. Thomas/St. John CAC recommended that OPM include St. John non-housing price data in the 2002 survey and in future COLA surveys. OPM agreed with the CAC and included this change among the other proposed COLA regulatory changes.

APPENDIX 1.—PUBLICATION IN THE FEDERAL REGISTER OF PRIOR SURVEY RESULTS: 1990–1998

Citation	Contents
65 FR 44103	Report on 1998 living-cost surveys conducted in Alaska, Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.
63 FR 56432	Report on 1997 living-cost surveys conducted in Alaska, Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.
62 FR 14190	Report on 1996 living-cost surveys conducted in Alaska, Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.
61 FR 4070	Report on winter 1995 living-cost surveys conducted in Alaska.
60 FR 61332	Report on summer 1994 living-cost surveys conducted in Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.
59 FR 45066	Report on winter 1994 living-cost surveys conducted in Alaska.
58 FR 45558	Report on summer 1992 and winter 1993 living-cost surveys conducted in Alaska, Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.
58 FR 27316	Report on summer 1993 living-cost surveys conducted in Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.
57 FR 58556	Report on summer 1991 and winter 1992 living-cost surveys conducted in Alaska, Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.
56 FR 7902	Report on summer 1990 living-cost surveys conducted in Alaska, Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.

APPENDIX 2—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES

[Asterisks show Detailed Expenditure Categories (DECs) at which OPM surveyed items]

Level	Code		Category name	Expenditures
1	TOTALEXP		Total	$48,701.32
2	FOODTOTL	MEG	Food	6,407.88
3	CERBAKRY	PEG	Cereals and bakery products	477.67
4	CEREAL		Cereals and cereal products	157.97
5	010110		Flour	7.33
5	010120		Prepared flour mixes	15.88
5	010210		Ready-to-eat and cooked cereals*	89.31
5	010310		Rice*	19.07
5	010320		Pasta, cornmeal & other cereal products*	26.38
4	BAKERY		Bakery products	319.69
5	BREAD		Bread	88.26
6	020110		White bread*	39.13
6	020210		Bread, other than white	49.13
5	CRAKCOOK		Crackers and cookies	79.90
6	020510		Cookies*	55.56
6	020610		Crackers	24.34
5	020810		Frozen & refrigerated bakery products*	27.04
5	OTHBAKRY		Other bakery products	124.49
6	020310		Biscuits and rolls*	41.38
6	020410		Cakes and cupcakes*	39.84
6	020620		Bread and cracker products	4.65
6	020710		Sweetrolls, coffee cakes, doughnuts	24.13
6	020820		Pies, tarts, turnovers	14.49
3	ANIMAL	PEG	Meats, poultry, fish, and eggs	714.81
4	BEEF		Beef	192.11
5	030110		Ground beef*	71.80
5	ROAST		Roast	28.82
6	030210		Chuck roast*	10.33
6	030310		Round roast*	8.66
6	030410		Other roast	9.83
5	STEAK		Steak	78.30
6	030510		Round steak*	12.86
6	030610		Sirloin steak*	25.26
6	030710		Other steak	40.18
5	030810		Other beef	13.18
4	PORK		Pork	98.96
5	040110		Bacon*	15.17
5	040210		Pork chops*	23.31
5	HAM		Ham	22.35
6	040310		Ham, not canned*	21.13
6	040610		Canned ham*	1.23
5	040510		Sausage	13.87
5	040410		Other pork	24.25
4	OTHRMEAT		Other meats	91.73
5	050110		Frankfurters*	17.00
5	LNCHMEAT		Lunch meats (cold cuts)	61.47
6	050210		Bologna, liverwurst, salami*	20.68
6	050310		Other lunch meats	40.79
5	LAMBOTHR		Lamb, organ meats and others	13.26
6	050410		Lamb and organ meats	9.10
6	050900		Mutton, goat and game	4.16
4	POULTRY		Poultry	129.18
5	CHICKEN		Fresh and frozen chickens	102.64
6	060110		Fresh and frozen whole chicken*	28.33
6	060210		Fresh and frozen chicken parts*	74.32
5	060310		Other poultry	26.54
4	FISHSEA		Fish and seafood	175.60
5	070110		Canned fish and seafood*	25.31
5	070230		Fresh fish and shellfish*	101.05
5	070240		Frozen fish and shellfish*	49.24
4	080110		Eggs*	27.24
3	DAIRY	PEG	Dairy products	316.36
4	MILKCRM		Fresh milk and cream	105.55
5	090110		Fresh milk, all types*	96.70
5	090210		Cream	8.85
4	OTHDAIRY		Other dairy products	210.81
5	100110		Butter	17.39
5	100210		Cheese*	108.29
5	100410		Ice cream and related products*	60.12
5	100510		Miscellaneous dairy products	25.01
3	FRUITVEG	PEG	Fruits and vegetables	356.11

APPENDIX 2—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) at which OPM surveyed items]

Level	Code		Category name	Expenditures
4	FRSHFRUT		Fresh fruits	186.75
5	110110		Apples*	33.23
5	110210		Bananas*	37.03
5	110310		Oranges*	21.81
5	110510		Citrus fruits, excluding oranges	16.87
5	110410		Other fresh fruits	77.80
4	FRESHVEG		Fresh vegetables	169.35
5	120110		Potatoes*	30.09
5	120210		Lettuce*	22.63
5	120310		Tomatoes*	33.65
5	120410		Other fresh vegetables	82.98
.				
3	PROCFOOD	PEG	Processed Foods	748.33
4	PROCFRUT		Processed fruits	127.16
5	FRZNFRUT		Frozen fruits and fruit juices	14.55
6	130110		Frozen orange juice*	6.32
6	130121		Frozen fruits	3.75
6	130122		Frozen fruit juices	4.48
5	130310		Canned fruits*	17.90
5	130320		Dried fruit	5.68
5	130211		Fresh fruit juice	24.72
5	130212		Canned and bottled fruit juice*	64.32
4	PROCVEG		Processed vegetables	113.36
5	140110		Frozen vegetables*	35.60
5	CANDVEG		Canned and dried vegetables and juices	77.76
6	140210		Canned beans*	16.60
6	140220		Canned corn	9.51
6	140230		Canned miscellaneous vegetables	23.67
6	140320		Dried peas	0.36
6	140330		Dried beans	3.64
6	140340		Dried miscellaneous vegetables	9.69
6	140310		Dried processed vegetables	0.68
6	140410		Frozen vegetable juices	0.45
6	140420		Fresh and canned vegetable juices	13.16
4	MISCFOOD		Miscellaneous foods	507.81
5	FRZNPREP		Frozen prepared foods	87.37
6	180210		Frozen meals*	26.12
6	180220		Other frozen prepared foods	61.25
5	180110		Canned and packaged soups*	34.37
5	SNACKS		Potato chips, nuts, and other snacks	95.21
6	180310		Potato chips and other snacks*	76.37
6	180320		Nuts	18.83
5	CONDMNTS		Condiments and seasonings	86.66
6	180410		Salt, spices, other seasonings*	20.88
6	180420		Olives, pickles, relishes	9.46
6	180510		Sauces and gravies*	39.77
6	180520		Baking needs & misc. products	16.55
5	OTHRPREP		Other canned & pkgd prepared foods	144.39
6	180611		Prepared salads	18.08
6	180612		Prepared desserts*	9.58
6	180620		Baby food*	38.38
6	180710		Miscellaneous prepared foods	78.20
6	180720		Vitamin supplements	0.15
5	190904		Food prepared by consumer on trips	59.81
3	OTHRFOOD	PEG	Other food at home	202.69
4	SWEETS		Sugar and other sweets	126.14
5	150110		Candy and chewing gum*	85.89
5	150211		Sugar*	17.15
5	150212		Artificial sweeteners	2.84
5	150310		Jams, preserves, other sweets*	20.25
4	FATSOILS		Fats and oils	76.55
5	160110		Margarine*	10.13
5	160211		Fats and oils*	20.82
5	160212		Salad dressings*	26.16
5	160310		Nondairy cream and imitation milk	9.00
5	160320		Peanut butter	10.44
3	NALCBEVG		Nonalcoholic beverages	239.71
4	170110		Cola*	86.72
4	170210		Other carbonated drinks	47.55
4	COFFEE		Coffee	37.70
5	170310		Roasted coffee*	25.07

APPENDIX 2—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) at which OPM surveyed items]

Level	Code		Category name	Expenditures
5	170410		Instant and freeze dried coffee	12.63
4	170510		Noncarbonated fruit flavored drinks*	18.80
4	170520		Tea	14.47
4	200112		Nonalcoholic beer	0.37
4	170530		Other nonalcoholic beverages and ice*	34.10
3	FOODAWAY	PEG	Food away from home	2,885.84
4	RESTRANT		Meals at restaurants, carry-outs and other	2,459.35
5	LUNCH		Lunch	938.18
6	190111		Lunch at fast food, take-out, etc.*	515.26
6	190112		Lunch at full service restaurants*	284.21
6	190113		Lunch at vending machines & vendors	9.97
6	190114		Lunch at employer and school cafeterias	128.73
5	DINNER		Dinner	947.59
6	190211		Dinner at fast food, take-out, etc.*	311.43
6	190212		Dinner at full service restaurants*	629.98
6	190213		Dinner at vending machines & vendors	1.76
6	190214		Dinner at employer and school cafeterias	4.43
5	SNKNABEV		Snacks and nonalcoholic beverages	344.59
6	190311		Snacks, etc. at fast food, take-out, etc.*	229.29
6	190312		Snacks, etc. at full service restaurants	26.13
6	190313		Snacks, etc. at vending machines, etc	70.07
6	190314		Snacks, etc. at non-public cafeterias	19.10
5	BRKFBRUN		Breakfast and brunch	228.99
6	190321		Breakfast at fast food, take-out, etc.*	110.28
6	190322		Breakfast at full service restaurants*	110.80
6	190323		Breakfast at vending machines, etc.	1.71
6	190324		Breakfast at non-public cafeterias	6.20
4	NONRESME		Non Restaurant Meals	426.48
5	190901		Board (including at school)	21.15
5	190902		Catered affairs	49.65
5	190903		Food on out-of-town trips	251.16
5	790430		School lunches	79.99
5	800700		Meals as pay	24.54
3	ALCBEVG	PEG	Alcoholic beverages	466.36
4	ALCHOME		At home	269.33
5	200111		Beer and ale*	151.40
5	200210		Whiskey	20.56
5	200310		Wine*	72.76
5	200410		Other alcoholic beverages	24.61
4	ALCAWAY		Away from home	197.04
5	BEERNALE		Beer and ale	97.03
6	200511		Beer & ale at fast food, take-out, etc.	19.20
6	200512		Beer & ale at full service restaurants*	65.30
6	200513		Beer & ale at vend. machines & vendors	1.09
6	200516		Beer & ale at catered affairs	11.44
5	WINE		Wine	24.93
6	200521		Wine at fast food, take-out, delivery, etc.	2.06
6	200522		Wine at full service restaurants*	21.66
6	200526		Wine at catered affairs	1.21
5	OTHALCBV		Other alcoholic beverages	75.07
6	200531		Other alcohol at fast food, take-out, etc.	4.90
6	200532		Other alcohol at full service restaurants	31.55
6	200533		Other alcohol at vending machines, etc.	0.53
6	200536		Other alcohol at catered affairs	5.04
6	200900		Alcoholic beverages purchased on trips	33.04
2	SHEL&UTL	MEG	Shelter and Utilities	15,244.33
3	SHELTER	PEG	Shelter	13,669.60
4	RNTLEQ		Rented Equivalence*	9,870.46
4	RENTXX		Rented Dwelling*	3,060.99
4	OTHLODGE		Other Lodging	707.16
4	350110		Tenants Insurance*	30.99
3	ENERUT	PEG	Energy Utilities*	1,289.59
3	WATERX	PEG	Water and other public services*	285.14
2	HHF&SUPP	MEG	Household Furnishings and Supplies	2,952.82
3	HHOPER	PEG	Household operations	664.63
4	HHPERSRV		Personal services	319.42
5	340210		Babysitting and child care*	78.76
5	340906		Care for elderly, invalids, & handicapped	24.12
5	340910		Adult day care centers	2.78
5	670310		Day-care centers, nursery, & preschools*	213.76
4	HHOTHXPN		Other household expenses	345.21

APPENDIX 2—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) at which OPM surveyed items]

Level	Code		Category name	Expenditures
5	340310		Housekeeping services*	74.34
5	340410		Gardening, lawn care service*	82.64
5	340420		Water softening service	5.03
5	340520		Laundry & dry clean (nonclothing)	2.28
5	340530		Coin-op laundry & dry clean (nonclothng)	6.63
5	340914		Services for termite/pest control	14.95
5	340915		Home security system service fee	31.84
5	340903		Other home services	21.34
5	330511		Termite/pest control products	0.52
5	340510		Moving, storage, freight express*	52.63
5	340620		Appliance repair, including service center	21.64
5	340630		Reupholstering, furniture repair	14.75
5	340901		Repairs/rentals of lawn & garden equip.	7.54
5	340907		Appliance rental	6.66
5	340908		Rental of office equip. for nonbus. use	1.06
5	340913		Repair of misc. equip. and furnishings	1.15
5	990900		Rental & installation of dishwashers, etc.	0.20
3	HKPGSUPP	PEG	Housekeeping supplies	517.77
4	LAUNDRY		Laundry and cleaning supplies	111.39
5	330110		Soaps and detergents*	60.63
5	330210		Other laundry cleaning products	50.75
4	HKPGOTHR		Other household products	293.49
5	330310		Toilet tissue, paper towels, napkins, etc.*	83.22
5	330510		Miscellaneous household products	123.71
5	330610		Lawn and garden supplies*	86.56
4	POSTAGE		Postage and stationery	112.90
5	330410		Stationery, stationery supplies, giftwraps*	59.15
5	340110		Postage	52.76
6	STAMP		Stamp*	51.60
6	PARPST		Parcel Post*	1.16
5	340120		Delivery services	0.98
3	TEX&RUGS	PEG	Textiles and Area Rugs	122.91
4	HHTXTILE		Household textiles	116.04
5	280110		Bathroom linens*	18.65
5	280120		Bedroom linens*	58.59
5	280130		Kitchen and dining room linens	10.38
5	280210		Curtains and draperies	13.44
5	280220		Slipcovers, decorative pillows	3.55
5	280230		Sewing mtls. for slipcovers, curtains, etc.	10.30
5	280900		Other linens	1.14
4	FLOORCOV		Floor coverings	6.87
5	RNTCARPT		Wall-to-wall carpeting (renter)	0.60
6	230134		Wall-to-wall carpet (renter)	0.49
6	320163		Wall-to-wall carpet (replacemnt) (renter)	0.11
5	320111		Floor coverings, nonpermanent*	6.27
3	FURNITUR	PEG	Furniture	513.48
4	290110		Mattress and springs*	79.17
4	290120		Other bedroom furniture	105.79
4	290210		Sofas	101.92
4	290310		Living room chairs*	59.83
4	290320		Living room tables	19.19
4	290410		Kitchen, dining room furniture*	54.91
4	290420		Infants' furniture	12.70
4	290430		Outdoor furniture	13.68
4	290440		Wall units, cabinets & other furniture	66.29
3	MAJAPPL	PEG	Major appliances	178.09
4	230116		Dishwashers, garbage disposals, etc.	15.01
4	300110		Refrigerators, freezers*	47.17
4	300210		Washing machines*	21.05
4	300220		Clothes dryers	14.08
4	300310		Cooking stoves, ovens*	26.21
4	300320		Microwave ovens	7.99
4	300330		Portable dishwasher	0.97
4	300410		Window air conditioners	6.23
4	320511		Electric floor cleaning equipment*	25.51
4	320512		Sewing machines	5.59
4	300900		Miscellaneous household appliances	8.28
3	SMAPPHWR	PEG	Small appliances, misc. housewares	102.30
4	HOUSWARE		Housewares	76.57
5	320310		Plastic dinnerware	2.17
5	320320		China and other dinnerware*	11.30

APPENDIX 2—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) at which OPM surveyed items]

Level	Code		Category name	Expenditures
5	320330		Flatware	3.07
5	320340		Glassware	13.35
5	320350		Silver serving pieces	2.51
5	320360		Other serving pieces	1.21
5	320370		Nonelectric cookware*	21.73
5	320380		Tableware, nonelectric kitchenware	21.24
4	SMLLAPPL		Small appliances	25.73
5	320521		Small electric kitchen appliances*	19.60
5	320522		Portable heating and cooling equipment	6.13
3	MISCHHEQ	PEG	Miscellaneous household equipment	853.64
4	320120		Window coverings*	14.72
4	320130		Infants' equipment	11.50
4	320140		Laundry and cleaning equipment	16.28
4	320150		Outdoor equipment*	21.95
4	320210		Clocks	46.99
4	320220		Lamps and lighting fixtures	17.10
4	320231		Other household decorative items	324.95
4	320232		Telephones and accessories*	41.77
4	320410		Lawn and garden equipment*	77.17
4	320420		Power tools*	43.40
4	320901		Office furniture for home use*	20.40
4	320902		Hand tools*	12.12
4	320903		Indoor plants, fresh flowers*	70.25
4	320904		Closet and storage items	14.56
4	340904		Rental of furniture	4.36
4	430130		Luggage	14.38
4	690210		Telephone answering devices	3.00
4	690220		Calculators	3.22
4	690230		Business equipment for home use	3.32
4	320430		Other hardware	30.67
4	690242		Smoke alarms	1.05
4	690245		Other household appliances	15.17
4	320905		Miscellaneous household equip. & parts	45.30
2	APPAREL	MEG	Apparel and services	1,949.90
3	MENBOYS	PEG	Men and boys	364.49
4	MENS		Men, 16 and over	281.87
5	360110		Men's suits*	21.47
5	360120		Men's sportcoats, tailored jackets	7.89
5	360210		Men's coats and jackets*	33.75
5	360311		Men's underwear*	15.47
5	360312		Men's hosiery	10.08
5	360320		Men's nightwear	2.93
5	360330		Men's accessories	20.30
5	360340		Men's sweaters and vests	11.48
5	360350		Men's active sportswear	15.40
5	360410		Men's shirts*	71.11
5	360511		Men's pants*	52.02
5	360512		Men's shorts, shorts sets	13.35
5	360901		Men's uniforms	4.37
5	360902		Men's costumes	2.25
4	BOYS		Boys, 2 to 15	82.61
5	370110		Boys' coats and jackets	6.28
5	370120		Boys' sweaters	2.63
5	370130		Boys' shirts*	19.64
5	370211		Boys' underwear	5.59
5	370212		Boys' nightwear	2.42
5	370213		Boys' hosiery	3.81
5	370220		Boys' accessories	2.56
5	370311		Boys' suits, sportcoats, vests	2.62
5	370312		Boys' pants*	20.90
5	370313		Boys' shorts, shorts sets	7.86
5	370903		Boys' uniforms	2.97
5	370904		Boys' active sportswear	3.24
5	370902		Boys' costumes	2.08
3	WMNSGRLS	PEG	Women and girls	812.23
4	WOMENS		Women, 16 and over	699.16
5	380110		Women's coats and jackets*	51.84
5	380210		Women's dresses*	82.20
5	380311		Women's sportcoats, tailored jackets	6.09
5	380312		Women's vests and sweaters*	54.09
5	380313		Women's shirts, tops, blouses*	126.65

APPENDIX 2—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) at which OPM surveyed items]

Level	Code		Category name	Expenditures
5	380320		Women's skirts	17.14
5	380331		Women's pants*	102.08
5	380332		Women's shorts, shorts sets	29.78
5	380340		Women's active sportswear	32.51
5	380410		Women's sleepwear	34.86
5	380420		Women's undergarments	40.91
5	380430		Women's hosiery	25.24
5	380510		Women's suits	37.03
5	380901		Women's accessories*	42.19
5	380902		Women's uniforms	10.70
5	380903		Women's costumes	5.84
4	GIRLS		Girls, 2 to 15	113.07
5	390110		Girls' coats and jackets	6.39
5	390120		Girls' dresses and suits*	21.31
5	390210		Girls' shirts, blouses, sweaters*	25.04
5	390221		Girls' skirts and pants*	22.27
5	390222		Girls' shorts, shorts sets	7.79
5	390230		Girls' active sportswear	7.38
5	390310		Girls' underwear and sleepwear	7.42
5	390321		Girls' hosiery	3.59
5	390322		Girls' accessories	5.57
5	390901		Girls' uniforms	3.72
5	390902		Girls' costumes	2.60
3	INFANT	PEG	Children under 2	88.68
4	410110		Infant coat, jacket, snowsuit	3.17
4	410120		Infant dresses, outerwear	23.90
4	410130		Infant underwear*	48.52
4	410140		Infant nightwear, loungewear*	4.19
4	410901		Infant accessories	8.90
3	FOOTWEAR	PEG	Footwear	340.80
4	400110		Men's footwear*	115.74
4	400210		Boys' footwear	33.69
4	400310		Women's footwear*	160.44
4	400220		Girls' footwear	30.92
3	OTHAPPRL	PEG	Other apparel products and services	343.71
4	420110		Material for making clothes	6.82
4	420120		Sewing patterns and notions	11.17
4	430110		Watches*	26.92
4	430120		Jewelry*	136.82
4	440110		Shoe repair and other shoe service	2.28
4	440120		Coin-op. apparel laundry & dry clean*	53.13
4	440130		Alteration, repair & tailoring of apparel	7.48
4	440140		Clothing rental	5.64
4	440150		Watch and jewelry repair	6.28
4	440210		Apparel laundry & dry clean not coin-op*	86.70
4	440900		Clothing storage	0.46
2	TRANS	MEG	Transportation	8,245.76
3	MOTVEHCO	PEG	Motor Vehicle Costs	4,401.84
4	VEHPURCH		Vehicle purchases (net outlay)	3,497.61
5	NEWCARS		Cars and trucks, new	1,900.46
6	450110		New cars*	1,190.89
6	450210		New trucks	709.58
5	USEDCARS		Cars and trucks, used	1,574.79
6	460110		Used cars	899.09
6	460901		Used trucks	675.70
5	OTHVEHCL		Other vehicles	22.36
6	450220		New motorcycles	10.69
6	460902		Used motorcycles	11.67
4	VEHFINCH		Vehicle finance charges	403.33
5	510110		Automobile finance charges*	212.51
5	510901		Truck finance charges	167.71
5	510902		Motorcycle and plane finance charges	1.69
5	850300		Other vehicle finance charges	21.42
4	LEASVEH		Leased vehicles	315.82
5	450310		Car lease payments	155.21
5	450313		Cash downpayment (car lease)	11.23
5	450314		Termination fee (car lease)	1.96
5	450410		Truck lease payments	134.22
5	450413		Cash downpayment (truck lease)	10.39
5	450414		Termination fee (truck lease)	2.81
4	VEHXP&LV		Other Vehicle Expenses and Licenses	185.07

APPENDIX 2—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) at which OPM surveyed items]

Level	Code		Category name	Expenditures
5	520110		State and local registration*	104.55
5	520310		Driver's license	7.87
5	520410		Vehicle inspection*	12.05
5	PARKING		Parking fees	30.22
6	520531		Parking fees in home city, exc. residence	25.57
6	520532		Parking fees, out-of-town trips	4.66
5	520541		Tolls	9.63
5	520542		Tolls on out-of-town trips	4.13
5	520550		Towing charges	6.19
5	620113		Automobile service clubs	10.42
3	GASOIL	PEG	Gasoline and motor oil	1,314.01
4	470111		Gasoline*	1,191.85
4	470112		Diesel fuel	13.42
4	470113		Gasoline on out-of-town trips	95.76
4	470211		Motor oil	12.01
4	470212		Motor oil on out-of-town trips	0.97
3	CARP&R	PEG	Maintenance and repairs	878.76
4	CARPAR		Maintenance and Repair Parts	228.80
5	470220		Coolant, additives, brake, trans. fluids	6.11
5	480110		Tires—purchased, replaced, installed*	127.40
5	480213		Parts, equipment, and accessories*	84.17
5	480214		Vehicle audio equipment, excluding labor	2.65
5	480212		Vehicle products	8.47
4	CARREP		Maintenance and Repair Service*	649.97
5	490000		Misc. auto repair, servicing	45.18
5	490110		Body work and painting	30.46
5	490211		Clutch, transmission repair	62.11
5	490212		Drive shaft and rear-end repair	5.66
5	490221		Brake work, including adjustments	70.91
5	490231		Repair to steering or front-end	24.55
5	490232		Repair to engine cooling system	26.42
5	490311		Motor tune-up	55.13
5	490312		Lube, oil change, and oil filters	82.42
5	490313		Front-end alignment, wheel balance, etc.	13.27
5	490314		Shock absorber replacement	4.91
5	490316		Gas tank repair, replacement	7.03
5	490318		Repair tires and other repair work	39.11
5	490319		Vehicle air conditioning repair	25.24
5	490411		Exhaust system repair	18.69
5	490412		Electrical system repair	44.53
5	490413		Motor repair, replacement	87.68
5	490900		Auto repair service policy	6.67
3	500110	PEG	Vehicle insurance*	839.60
3	CARNTL	PEG	Rented vehicles	44.75
3	PUBTRANS	PEG	Public transportation	766.79
4	530110		Airline fares*	450.04
4	530901		Ship fares	104.86
4	530210		Intercity bus fares	27.89
4	530510		Intercity train fares	38.04
4	LOCTRANS		Local Transportation	145.96
5	530902		School bus	2.90
5	530311		Intracity mass transit fares	83.27
5	530312		Local trans. on out-of-town trips	17.89
5	530411		Taxi fares and limousine service on trips	10.50
5	530412		Taxi fares and limousine service*	31.40
2	MEDICAL	MEG	Medical	2,161.20
3	HEALTINS	PEG	Health insurance*	1,015.06
3	MEDSERVS	PEG	Medical services	698.31
4	560110		Physician's services*	166.71
4	560210		Dental services*	295.45
4	560310		Eyecare services	44.63
4	560400		Service by other than physician	45.77
4	560330		Lab tests, x-rays	21.17
4	570110		Hospital room*	36.78
4	570210		Hospital service other than room	42.44
4	570220		Care in convalescent or nursing home	34.69
4	570230		Other medical care services	10.68
3	DRGS&MED	PEG	Drugs and medical Supplies	447.83
4	DRUGS		Drugs	327.32
5	550210		Nonprescription drugs*	59.18
5	550410		Nonprescription vitamins	44.63

APPENDIX 2—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) at which OPM surveyed items]

Level	Code		Category name	Expenditures
5	540000		Prescription drugs*	223.50
4	MEDSUPPL		Medical supplies	120.51
5	550110		Eyeglasses and contact lenses*	74.50
5	550340		Hearing aids	10.23
5	550310		Topicals and dressings*	26.72
5	550320		Medical equipment for general use	2.28
5	550330		Supportive & convalescent medical equip.	3.57
5	570901		Rental of medical equipment	1.31
5	570903		Rental of supportive, convalescent equip.	1.89
2	RECREATN	MEG	Recreation	3,032.20
3	FEESADM	PEG	Fees and admissions	708.94
4	610900		Recreation expenses, out-of-town trips	37.92
4	620111		Social, recreation, civic club membership*	113.43
4	620121		Fees for participant sports*	107.29
4	620122		Participant sports, out-of-town trips	45.09
4	620211		Movie, theater, opera, ballet*	139.56
4	620212		Movie, other admissions, out-of-town trips	67.91
4	620221		Admission to sporting events	47.02
4	620222		Admission to sports events, out-of-town	22.63
4	620310		Fees for recreational lessons*	90.17
4	620903		Other entertainment services, out-of-town	37.92
3	TVAUDIO	PEG	Television, radios, sound equipment	375.46
4	TELEVSN		Televisions	163.24
5	310110		Black and white TV	1.22
5	310120		Color TV—console	36.90
5	310130		Color TV—portable, table model*	42.90
5	310210		VCR's and video disc players*	28.60
5	310220		Video cassettes, tapes, and discs	27.98
5	310230		Video game hardware and software	22.29
5	340610		Repair of TV, radio, & sound equipment	3.20
5	340902		Rental of televisions	0.15
4	AUDIO		Radios, sound equipment	212.22
5	310311		Radios	18.25
5	310313		Tape recorders and players	3.73
5	310320		Sound components and systems*	29.63
5	310331		Miscellaneous sound equipment	0.40
5	310332		Sound equipment accessories	5.53
5	310334		Satellite dishes	4.12
5	310341		Compact disc & tape mail order clubs*	12.40
5	310342		Records, CDs, audio tapes, needles	51.07
5	340905		Rental of VCR, radio, & sound equip.	0.78
5	610130		Musical instruments and accessories	33.27
5	620904		Rental and repair of musical instruments	1.70
5	620912		Rental of video cassettes, tapes, discs*	51.34
3	PETSPLAY	PEG	Pets, toys, and playground equipment	560.22
4	PETS		Pets	359.15
5	610310		Pet food*	155.98
5	610320		Pet purchase, supplies, medicine	61.37
5	620410		Pet services	29.65
5	620420		Vet services*	112.15
4	610110		Toys, games, hobbies, and tricycles*	197.38
4	610120		Playground equipment	3.70
3	ENTEROTH	PEG	Other entertainment supplies, equipment, and services	472.20
4	UNMTRBOT		Unmotored recreational vehicles	52.15
5	600121		Boat without motor and boat trailers	15.59
5	600122		Trailer and other attachable campers	36.56
4	PWRSPVEH		Motorized recreational vehicles*	85.80
5	600141		Purchase of motorized camper	29.86
5	600142		Purchase of other vehicle	25.07
5	600132		Purchase of boat with motor	30.88
4	RNTSPVEH		Rental of recreational vehicles	3.59
5	520904		Rental noncamper trailer	0.30
5	520907		Boat and trailer rental out-of-town trips	1.01
5	620909		Rental of campers on out-of-town trips	1.58
5	620919		Rental of other vehicles on out-of-town trips	0.68
5	620922		Rental of other RV's	0.01
4	600110		Outboard motors*	5.32
4	520901		Docking and landing fees	9.53
4	RECEQUIP		Sports, recreation and exercise equipment	193.09
5	600210		Athletic gear, game tables, and equip.*	78.85
5	600310		Bicycles*	11.98

APPENDIX 2—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) at which OPM surveyed items]

Level	Code		Category name	Expenditures
5	600410		Camping equipment	16.00
5	600420		Hunting and fishing equipment	50.58
5	600430		Winter sports equipment	4.54
5	600901		Water sports equipment	10.82
5	600902		Other sports equipment	18.12
5	620908		Rental and repair of misc. sports equip.	2.20
4	PHOTOEQ		Photographic equip., supplies and services	105.39
5	610210		Film*	23.42
5	610220		Other photographic supplies	1.15
5	620330		Film processing*	35.03
5	620905		Repair & rental of photographic equip.	0.33
5	610230		Photographic equipment	23.27
5	620320		Photographer fees	22.19
4	610901		Fireworks	2.56
4	610902		Souvenirs	1.70
4	610903		Visual goods	2.90
4	620913		Pinball, electronic video games	10.18
3	PERSPROD	PEG	Personal care products	336.66
4	640110		Hair care products*	73.16
4	640120		Nonelectric articles for the hair	6.72
4	640130		Wigs and hairpieces	1.36
4	640210		Oral hygiene products, articles	35.09
4	640220		Shaving needs	18.84
4	640310		Cosmetics, perfume, bath preparation*	155.44
4	640410		Deodorants, hygiene, misc. personal care	34.75
4	640420		Electric personal care appliances	11.31
3	PERSSERV	PEG	Personal care services	342.23
4	650310		Personal care service*	342.23
3	READING	PEG	Reading	236.49
4	590110		Newspapers	91.52
5	590111		Newspaper subscriptions*	69.14
5	590112		Newspaper, non-subscriptions*	22.38
4	590210		Magazines	50.39
5	590211		Magazine subscriptions*	33.86
5	590212		Magazines, non-subscriptions*	16.52
4	590220		Books thru book clubs	14.49
4	590230		Books not thru book clubs*	79.69
4	660310		Encyclopedia and other reference books	0.40
2	EDU&COMM	MEG	Education and Communication	1,991.01
3	EDUCATN	PEG	Education	100.84
4	670210		Elementary and high school tuition*	85.25
4	660210		School books, supplies, equipment	15.59
3	COMMICAT	PEG	Communications	1,579.20
4	PHONE		Telephone services	1,101.68
5	270101		Telephone services, exc. cell phones*	941.68
5	270102		Telephone services for cell phones*	160.01
4	690114		Computer information services*	114.65
4	270310		Community antenna or cable TV*	362.87
3	COMP&SVC	PEG	Computers and Computer Services	310.97
4	690113		Repair of computers for nonbusiness use	3.85
4	690111		Computers & hardware nonbusiness use*	279.53
4	690112		Software & accessories for nonbus. use	27.59
2	MISCMEG	MEG	Miscellaneous	6,716.22
3	TOBACCO	PEG	Tobacco products and smoking supplies	236.00
4	630110		Cigarettes*	218.42
4	630210		Other tobacco products	15.83
4	630220		Smoking accessories	1.76
3	MISC	PEG	Miscellaneous	1,015.55
4	620911		Miscellaneous fees, pari-mutuel losses	57.67
4	680110		Legal fees*	124.11
4	680140		Funeral expenses*	53.22
4	680210		Safe deposit box rental	5.19
4	680220		Checking accounts & bank service charges	27.73
4	680901		Cemetery lots, vaults, maintenance fees	18.12
4	680902		Accounting fees*	74.37
4	680903		Miscellaneous personal services	56.04
4	710110		Credit card interest and annual fees*	375.49
4	900001		Occupational expenses	133.33
4	790600		Expenses for other properties	87.52
4	880210		Interest paid, home equity line of credit	2.75
3	INSPENSN	PEG	Personal insurance and pensions	5,464.66

APPENDIX 2—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) at which OPM surveyed items]

Level	Code		Category name	Expenditures
4	LIFEINSR		Life and other personal insurance*	660.18 ′
4	PENSIONS		Pensions and Social Security*	4,804.48

Appendix 3 COLA Survey Items and Descriptions

Adhesive bandages. 1 box of 30 adhesive bandages. Assorted sizes. Clear or flexible ok to use. (Note: in Virginia, add tax to this item.) Use: Band Aid brand, Nexcare.

Airfare—Los Angeles. Lowest cost round trip ticket to Los Angeles, CA, 3-week advance reservation, departing and returning midweek, including Saturday night stay. Price nonrefundable ticket. Disregard restrictions, super-saver fares, and special promotions. (In reference area, price all flights from BWI, Reagan/National, and Dulles. Price all flights via Internet on same day.) Use: Round Trip.

Airfare—Miami. Lowest cost round trip ticket to Miami, FL, 3-week advance reservation, departing and returning midweek, including Saturday night stay. Price nonrefundable ticket. Disregard restrictions, super-saver fares, and special promotions. (In reference area, price all flights from BWI, Reagan/National, Dulles. Price all flights via Internet on same day.) Use: Round Trip.

Airfare—Seattle. Lowest cost round trip ticket to Seattle, WA, 3-week advance reservation, departing and returning midweek. (Including Saturday night stay). Price nonrefundable ticket. Disregard restrictions, super-saver fares, and special promotions. (In reference area, price all flights from BWI, Reagan/National, Dulles. Price all flights via Internet on same day.) Use: Round Trip.

Airfare—St. Louis. Lowest cost round trip ticket to St. Louis, MO, 3-week advance reservation, departing and returning midweek. (Including Saturday night stay). Price nonrefundable ticket. Disregard restrictions, super-saver fares, and special promotions. (In reference area, price all flights from BWI, Dulles, and Reagan/National Airport. Price all flights via Internet on same day.) Use: Round Trip.

Alternator (Ford). Price of a 95 Amp alternator for a 1996 Ford Explorer 4.0L Fuel Injected V6 with A/C and AT to the consumer at a dealership. Use: Alternator (Ford).

Alternator (Honda). Price of an alternator for a 1996 Honda Civic DX, 4 Door 1.7L, 4 cylinder, with A/C and AT to the consumer at a dealership. Use: Honda, Mitsubishi.

Alternator (Toyota). Price of an 80 Amp alternator for a 1996 Toyota Camry LE, 4 Door, 2.4L, 4 cylinder, with A/C and AT to the consumer at a dealership. Use: Alternator (Toyota).

Antacid. One large size bottle of extra or ultra strength tablets. Count varies from 72 to 96 tablets. Use: Tums EX 96 tablets, Tums Ultra 72 tablets.

Antibacterial ointment. 1 ounce tube of antibacterial ointment. (Note: in Virginia, do not add tax to this item.) Use: Neosporin.

Apples. Price per pound, loose (not bagged). If only bagged available, report bag weight. Note quality. Use: Red Delicious, Golden Delicious.

Area Rug (Catalog). Approximately 8′ X 11′ braided rug, flat woven, 3-ply yarn. Wool/nylon/rayon. Multi-colored accents. Include shipping and handling. Use: Area rug (A751–0449 C).

Area Rug (Furn Store). Approximately 8′ X 11′ braided rug, flat woven, 3-ply yarn. Wool/nylon/rayon. Multi-colored accents. Use: Area Rug.

Aspirin. 50 count bottle. If no Bayer, report Bufferin or Excedrin as a substitute. Use: Bayer.

Auto Finance Rate. Interest rate for a 4-year loan on a new car with a down payment of 20 percent. Assume the loan applicant is a current bank customer who will make payments by cash/check and not by automatic deduction from the account. Use: Interest Percentage Rate (times 100).

Auto Inspection. Annual cost of auto safety and emissions inspection required by local government. If not required annually prorate to annual. Assume 4-year trade cycle. Use: Auto Inspection.

Baby Food. 4 oz jar strained vegetables or fruit. Use: Gerber Seconds Baby Food, Heinz Baby Food.

Babysitter. Minimum hourly wage appropriate to area. Use: Babysitting.

Baking Dish. 8 inch square glass, clear or tinted. Exclude baking dish with cover or lid. Use: Pyrex, Anchor Hocking.

Bananas. Price per pound If sold by bunch, report price and weight of average sized bunch. Note quality. Use: Available Brand.

Basic Funeral Services. Basic services of Funeral Director and staff, including overhead. Price covers conducting the arrangements conference; planning the funeral; consulting with family and clergy; shelter of remains; preparing and filing of necessary notices; obtaining necessary authorizations and permits; coordinating with the cemetery, crematory or other third parties; proportionate share of basic overhead costs. Note any other services that are included in price. Use: Basic Funeral Services.

Bath Towel. 54½″×30″ wide (aprox.) 100% cotton, medium weight. Side hem is woven selvage. Bottom hem may be folded. Use: Martha Stewart Everyday #246943286, Store brand.

Beer at Home (bottles). 6 pack of bottled beer, 12 oz size. Use: Budweiser.

Beer at Home (cans). Six-pack of 12 oz cans of Budweiser. Do not price refrigerated beer unless that is the only type available. In Puerto Rico, price 10 oz cans and report as substitutes. Use: Budweiser.

Beer Away—(CH type). One glass of Budweiser/Miller Lite beer. Price only at Chart House type restaurants where dinner is priced. Use: Budweiser, Miller Lite.

Beer Away—(RC type). One glass of Budweiser/Miller lite beer. Price only at Ruth's Chris type restaurants where dinner is priced. Use: Budweiser, Miller Lite.

Beer Away—Casual. One glass of Budweiser/Miller Lite beer. Price only at casual restaurants where dinner is priced. Use: Budweiser, Miller Lite.

Bicycle 20″. 1-speed boy's bike with kickstand. Solid frame and front forks (i.e., no shock absorbers). Coaster brake in rear. Caliper brake in front. Use: Huffy Turbo Blast, Quasar, Mongoose.

Board Game. Standard edition, Not deluxe. Use: Sorry, Scrabble, Life.

Book. Store price (not publisher's list price unless that is the store price) for top selling paperback book. Also price via Amazon.com. Use: Kentucky Rich (Michaels), On the Street Where you Live (Clark), Dust To Dust (Hoag).

Bottled water. One gallon (128 fl oz) spring water. Do not price sparkling or distilled water. Record brand in comments. Use: Store brand, Local brand.

Bowling. One game of open (or non-league) 10-pin bowling on Saturday night. Exclude shoe rental. If priced by the hour, report hourly rate divided by estimated number of games per hour and note hourly rate in comments. Do not price duck-pin bowling. Use: Bowling.

Boy's Jeans. Regular fit, size range 9–14, inexpensive jeans. Not bleached, stone-washed or designer jeans. Use: Rustler, Wrangler.

Boy's Polo Shirt. Knit polo-type shirt with collar, solid color, size range 7–14. Prefer no embroidered emblem. Not Izod or Polo brand. Use: Local brand.

Boy's Polo Shirt (Name brand). Name brand, knit polo shirt with collar, solid color, preferably without embroidered emblem. Size 7–14. Use: Polo, Calvin Klein.

Boy's T-Shirt. Screen-printed t-shirt for boys ages 8 thru 10 (size 7–14). Pullover with crew neck, short sleeves and polyester/cotton blend. Do not price team logo shirts. Use: Store brand.

Bread, White. 22–24 oz loaf, sliced. Not store brand. Use: Wonder, Sunbeam, Holsum.

Breakfast full-service. 2 strips of bacon or 2 sausages, 2 eggs, toast, coffee, and juice. Check sales tax and INCLUDE in price. Use: Bacon and Eggs.

Breakfast, Fast Food (Bagel). Ham, Egg and Cheese Bagel, hash brown and coffee. Use value meal, medium size. Check sales tax and INCLUDE in price. Use: Ham, Egg & Cheese Bagel value meal.

Breakfast, Fast Food (Egg McMuffin). Egg McMuffin, hash brown and coffee. Use value meal, medium size. Check sales tax and

INCLUDE in price. Use: Egg McMuffin value meal.

Cable TV, Basic Service. One month lowest level service. Report number of channels. If 12 or less, price next service level unless it includes premium (e.g., movie) channels. Do not report hook-up charges. Use: 1 month of cable TV.

Cable TV, Level 1 Service. One month of the next level of service above lowest level. If premium (e.g., movie) channels included, please note in remarks (e.g., HBO1, Disney, Home Team Sports). Use: Level I Cable.

Camera Film. Single roll, 35 millimeter, 24 exposure, 100 ASA (speed). If only multi-roll packs available, note number of rolls and ASA of each in comments. Use: Kodak Gold, Fuji.

Candy Bar. One regular size, weight approx. 1.55 oz to 2.13 oz. Not king-size or multi-pack. Use: Snickers, Hershey's.

Canned Chopped Ham. 12 oz can of processed luncheon meat. Do not price turkey, light or smoked. Use: SPAM.

Canned Green Beans. 14–15 oz can of plain cut green beans. Do not price French cut style, Italian style, canned vegetable mixtures, or similar specialty variations. Use: Del Monte, Green Giant.

Canned Ham—2 pound. 2 pound canned ham. Use: DAK, Hormel Black Label.

Canned Ham—3 pound. 3 pound canned ham. Use: DAK, Hormel Black Label, Dubuque.

Canned Peaches. 15–16 oz can of sliced peaches. Do not price lite or juice pack. Use: Libby's, Del Monte.

Canned Soup. Regular size (approx 10 oz). Not hearty, reduced fat or salt free varieties. Use: Campbell's Vegetable Soup, Campbell's Chicken Noodle Soup.

Canned Tuna. Chunk light, packed in water (6.0 oz to 6.13 oz). Do not price fancy style or albacore. Use: Star Kist, Bumble Bee.

Cellular Phone Middle Plan. Middle level monthly cellular phone service with a minimum of 500 anytime minutes and 3000 weekend and evening minutes per month. Use: Cingular, Sprint.

Cellular Telephone Service. Basic monthly cellular phone service with a minimum of 250 anytime minutes and 1000 weekend and evening minutes per month. Use basic minimum offers from carriers that have similar monthly phone plans. Use: Monthly Service.

Cereal. 18 to 20 oz box of raisin bran cereal. Use: Post Raisin Bran, Kellogg's Raisin Bran.

Charcoal grill. Charcoal grill, heavy gauge, porcelain enameled, steel lid, approx. 22.5″ in diameter. Use: Weber1touchsilver (741001).

Cheese. 10 oz package cheese. Price mild cheddar if available. Use: Kraft Cracker Barrel.

Chicken breast. Price per pound of USDA grade boneless, skinless chicken breasts. Price store brand if available, otherwise record brand. Note: Most ''fresh'' (i.e., not frozen) chicken is ''chilled'' to almost freezing. Do not price frozen chicken. Use: Boneless, skinless breast.

Chicken, Whole. Price per pound of USDA graded, whole fryer chicken. Price store brand if available, otherwise record brand. Note: Most ''fresh'' (i.e., not frozen) chicken is ''chilled'' to almost freezing. Do not price frozen chicken. Use: Whole fryer.

Cigarettes. One pack filter kings soft pack. Not generic. Use: Winston, Marlboro.

Clean and Check Up. Current patient charge for routine exam, including 2-bite wing x-rays and cleaning of teeth (light scaling and polishing). No special treatment of gums or teeth. Not initial visit. Not specialist or oral surgeon. Price for an adult. Use: Dentist check-up.

Coffee, Ground. 13 oz can. Do not price decaffeinated or special roasts. Use: Folger's, Maxwell House.

Compact Disc (Discount Store). Current best-selling CD. Do not price double CD's. Use: Spiderman Soundtrack, C'mon, C'mon (Sheryl Crow).

Compact Disc (Music Store). Current best-selling CD. Do not price double CD's. Use: Spiderman Soundtrack, C'mon, C'mon (Sheryl Crow).

Compact Disc Player. 5 disc rotary changer, 32-track programming, 10 key access, 8 times over sampling, and remote. IMPORTANT: Specific model numbers may vary by dealer. Use: Sony CDPCE275, JVC XLFZ158, RCA RP8075.

Computer. Laptop computer with 14 inch screen, Intel® Pentium® III 1.2 GHZ processor, 20 GB hard drive, 128MB memory, and DVD–CDRW ROM, 56K modem, Windows XP Home operating system. Use: HP Pavilion ZT1135 Notebook PC, Compaq 1700 series, Gateway 500Seb.

Contact Lenses. One box of disposable contact lenses, 3 pairs in the box, a pair lasts two weeks. Price of 1 box only. Use: Sequence, Medalists, Acuvue.

Cookies. 18—20 oz package. Use: Keebler Chips Deluxe, Nabisco Chips Ahoy.

Cooking oil. 48 FL oz plastic bottle. Not blends, corn oil, olive oil, or canola oil. Use: Crisco, Wesson Oil.

Cordless phone. Cordless phone with approx. 30 channels and caller id. 900 MHz to 2.4 GHz. Use: Panasonic (KXTGA100N), Uniden (TRU246), Vtech (VT2421).

Credit Card. Interest and Annual Fee Sum of charge card interest rate applied to the national average balance ($8,562) plus any annual fees charged by the bank. Do not use Gold or Platinum cards. Use: Total Cost.

Cremation Services. Direct cremation. Includes removal of remains, local transportation to crematory, necessary body care and minimal services of the staff. Include crematory fee and obtain minimum container fee. Use: Cremation Services.

Day Care. One month of day care for a 3 year old child, 5 days a week, about 10 hours per day. If monthly rate is not available, 1) obtain weekly rate, and record in the comments section 2) multiply weekly rate by 4.33 to obtain monthly rate. Price at day care center (in a Federal building is ok, but not on a military base). Try private first, then at a Federal center next. If subsidized, ask details. Use: DAY CARE.

Dental Crown. Cost of composite on lower molar without restoration. Price for an adult. Use: Dental crown.

Dental filling. Lower molar, two surfaces amalgam filling. Price for an adult. Use: Dental filling.

Dining table set (Catalog). Contemporary style, rectangular table, solid hardwood, no leaf, four legs. Imported. 48×30″. Two side chairs: 18×22×37″, and two end chairs with arms: 23½×20¾×37″. No or minimum pads on chairs. Include shipping and handling. Use: Manhattan Collection.

Dining table set (Furn Store). Contemporary style, rectangular table, solid hardwood, no leaf, four legs. Imported. 48×30″. Two side chairs: 18×22×37″, and two end chairs with arms: 23½×20¾×37″. No or minimum pads on chairs. Use: Manhattan Collection.

Dinner-Full Service (Chart House type). Large steak dinner (10 to 16 oz), salad, rice or potato, no coffee. Do not include tip. Check sales tax and INCLUDE in price. Use: Large steak dinner.

Dinner-Full Service (Pancake House type). 8–12 oz steak, small side dish (e.g., rice or potato), side salad or salad bar, and coffee. Meal should not include dessert. If 8–12 oz unavailable, price closest size and note in comments. Check sales tax and INCLUDE in price. Do not include tip. Use: Steak Dinner.

Dinner-Full Service (Ruth's Chris type). 8–10 oz petite filet, salad, potato, no coffee. Check sales tax and INCLUDE in price. Do not include tip. Use: Petite filet dinner.

Dinner-Full Service (Casual). 8–12 oz steak, small side dish (e.g., rice or potato), side salad or salad bar, and coffee. Meal should not include dessert. If 8–12 oz unavailable, price closest size and note in comments. Check sales tax and INCLUDE in price. Do not include tip. Use: Steak Dinner.

Dish Set. Corelle Abundance pattern tableware 20-piece set. Includes: 4 dinner plates, 4 luncheon plates, 4 bowls, 4 cups, and 4 saucers. Pattern is beige with a fruit and flower motif. Use: Corelle Impressions, New Corelle.

Disposable diapers. 34 count package, Stage 2 (child 12–18 pounds). Not jumbo, overnight or larger size diapers. Use: Pampers, Huggies.

Doctor Office Visit. Typical fee when medical advice or simple treatment is needed. Not initial visit. Exclude regular physical examination, injections, medications, or lab tests. Use general practitioner not pediatrician or other specialist. Use: Doctor visit.

Drill, Cord. ½″ reversible, variable speed, key-type chuck, 5.5 amp electric drill with cord. Use: Black & Decker DR500.

Drill, Cordless. Variable speed, reversible, key-less chuck, 9.6 volt, electric drill with fast recharge. Use: Makita Model 6095DWBE, DeWalt DW926K–2.

Dry clean Man's Suit. 2-piece man's suit of typical fabric. Do not price for silk, suede or other unusual materials. Use: Dry cleaning.

DVD player. 5 disc DVD/CD player with remote, with on-screen menus. Jacks are located in the back. Use: Panasonic (DVD–CV52K).

Education, K–12 Private. Cost of tuition. Note if books & uniforms are included. If price varies by grade, record in comments price for each grade. Note any annual, recurring fees, i.e., registration, computer, activity, etc. Avoid pricing at church-affiliated schools if possible. If not possible, note any rate differences for church members versus others. Use: Ed, K–12 Private.

Eggs (brown, large) One dozen large, brown eggs. Record brand in comments. Use: Store brand, Local brand.

Eggs (white, large). One dozen large eggs. Not brown eggs. Record brand in comments. Use: Local Brand, Store Brand.

Eggs (white, medium). One dozen medium, white eggs. Do not price brown eggs. Record brand in comments. Use: Store brand, Local brand.

Electric Bill. Price per KWH, plus any additional monthly charges. Obtain local electrical utility bill, as possible. Use: utility worksheet.

Electric Broom. Electric broom style vacuum cleaner w/ approx. 2–6 amps, 120 volts. Electric bagless broom, dirt cup. Use: HooverTempoStikVacORQuikBroomSuprem, Bissel Easy Vac Plus 5 amp 3102–D, Eureka Boss Lite.

Embalming. Price for embalming non-autopsied remains. Use: Embalming.

Fast food Dinner Burger. Hamburger meal consisting of a Big Mac, Medium fries and medium soft drink. Check sales tax and INCLUDE in price. Use: Big Mac Value Meal.

Fast food Dinner Pizza. Medium cheese pizza with salad and small soft drink. Check sales tax and INCLUDE in price. Use: Medium Cheese Pizza.

Fast food Lunch Burger. Hamburger meal consisting of a Big Mac, Medium fries and medium soft drink. Check sales tax and INCLUDE in price. Use: Big Mac Value Meal.

Fast food Lunch Pizza. Personal size cheese pizza or 1 slice of cheese pizza, and a small soft drink. Do NOT include salad. Check sales tax and INCLUDE in price. Use: Cheese Pizza.

FEGLI (Life Insurance). Federal Life Insurance. Not surveyed. Constant across all areas. Use: OPM.

FEHB Insurance. Self Only and Self and Family. OPM provides data on Federal Health Benefits Insurance premiums. Use: OPM.

FERS/CSRS Contributions. Federal Retirement Contributions. Not surveyed. Assumed to be constant across all areas. Use: FERS/CSRS.

Filing cabinet. 2 drawer metal vertical file cabinet, approx. 24″×14″× 8″ file drawer sides may accommodate hanging files. Use: Hirsh Industries, Space Solutions, or Work.Org brand.

Film processing. 1 hour color film processing, in store. 24 exposure, 35 mm, 3×5 single print. Use: Film processing 1 hour.

Ford Explorer—2WD. Purchase price of a 2002 Ford Explorer XLS, 2 wheel drive, 4 door, 4.0 liter, 6 cylinder, 5-speed automatic overdrive transmission. Please note the price of any special option packages. Use Worksheet. Use: Ford Explorer XLS 2 WD–AT.

Ford Explorer—4WD. Purchase price of a 2002 Ford Explorer XLT, 4x4, 4 door, 4.0 liter, 6 cylinder, 5-speed automatic overdrive transmission. Please note the price of any special option packages. Use Worksheet. Use: Ford Explorer XLT.

Ford License, Reg, & Taxes (2WD). Annual license, registration and personal property taxes for a Ford Explorer, 2 wheel drive Use: Ford 2WD License, Reg & Taxes.

Ford License, Reg, & Taxes (4WD). License, registration, and periodic taxes (*e.g.*, road or personal property tax, but NOT one-time taxes such as sales tax) on a 2002 Ford Explorer XLT, 4x4, 4 door, 4.0 liter, 6 cylinder, 5-speed automatic overdrive transmission. Use: FORD 4 WD MISC TAXES & REG.

Fresh Mahi-Mahi. Price per pound of fresh mahi-mahi fillet. Do not price previously frozen (PF) or specially prepared varieties. Do not price family-pack, value-pack, super-save pack, or equivalent. Use: Mahi-Mahi fillet.

Fresh Red Snapper. Price per pound of fresh Red Snapper. Use: Red Snapper.

Fresh Salmon. Price per pound of fresh salmon fillet. Do not price previously frozen (PF) or specially prepared varieties. Do not price family-pack, value-pack, super-save pack, or equivalent. Use: Salmon fillet.

Fresh Shrimp. Price per pound of fresh tiger shrimp-size 16 to 20 count per pound. Do not price previously frozen (PF) or specially prepared varieties. Do not price family-pack, value-pack, super-save pack, or equivalent. Use: Tiger Shrimp.

Frozen fish fillet. Price of frozen ocean whitefish fillet prepared with a sauce (*e.g.*, lemon-butter, teriyaki, or Cajun sauce). Do not price breaded filets. Use: Gorton's grilled fillets, Mrs. Paul's.

Frozen orange juice. 12 fl oz orange juice concentrate (makes 48 fl oz). Do not price calcium fortified, pulp free, country style, etc. Use: Sunkist, Minute Maid.

Frozen peas. 16 oz package. Do not price peas with sauce or Green Giant Select. Use: Green Giant, Birdseye, Hanover.

Frozen TV Dinner. One 11.5-oz (approximate) frozen dinner with vegetable and/or other condiment. Do not price Hungry Man or equivalent extra-portion sizes. Use: Swanson Turkey Dinner, Swanson Fried Chicken Dinner.

Frozen waffles. 8 to 10 waffles per package. Use: Aunt Jemima, Kellogg's, Eggo.

Fruit Drink. 64 fl oz bottle. Not powdered mixes or individual serving sized drinks. Use: Hi-C, Hawaiian Punch.

Fruit Juice. 48 oz glass or plastic bottle of juice. Do not price frozen or boxed drink or drink in significantly different size bottle. Use: Ocean Spray Cranberry Juice Cocktail, Ocean Spray Cranapple.

Gasoline. Self-Serve Price per gallon for self-service unleaded regular gasoline. Use: Gas for cars.

Gelatin. 3 oz box gelatin dessert. Use: JELL-O, Royal.

General Admission. Adult price for regular length, current-release (currently advertised on television) evening film. Report weekend evening price if different from weekday. Use: Movie.

Girl's dress. Cotton blend short or long-sleeved dress appropriate for school. Exclude extra ornamentation. Size range 7–14 (for ages 8–10). Use: Store brand.

Girl's Dress (Catalog). Girls shantung dress, braided trim, empire waist, back zip, dry clean. Include shipping and handling. Use: Shantung dress.

Girl's jeans. Basic plain jeans for girls ages 8–10 (size 7–14). Store brand, *e.g.,* Arizona for JC Penney. Use: Store brand.

Girl's Jeans (Catalog). Girls 5 pocket, pre-washed jeans, machine washable. Include shipping and handling. Use: 5 pocket jeans.

Girl's jeans (CK type). Designer basic plain jeans for girls ages 8–10 (size 7–14). Use: Calvin Klein Classics.

Girl's Polo type top. Girl's polo cotton blend, not stretchy material (that has lycra), striped or solid pattern. Sizes 7–14. Use: Store brand.

Gold Ball Earrings (Dept Store). One pair 6mm, 14K hollow, gold ball earrings for pierced ears. If not available, but 4, 5, 7 or 8mm are available, record each separately as a substitute. Do not price gold filled. Use: Store Brand.

Gold Ball Earrings (Jewelry Store). One pair 6mm, 14K hollow, gold ball earrings for pierced ears. If not available, but 4, 5, 7 or 8mm are available, record each separately as a substitute. Do not price gold filled. Use: store brand.

Golf. 18 holes of golf on weekend w/cart. No par 3 courses or early-bird/off-hours prices. If only 9 holes available, double price. If only daily rate available (unlimited number of holes), report the Sat/Sun rate. If at resort, price RESIDENT FEE only. Use: golf.

Ham, Cured, not canned. Price per pound a boneless cured ham. Do not price honey glazed. Use: Store Brand.

Hamburger Buns. 8-count package of sliced enriched white hamburger buns. Do not price store brand, lite, whole wheat, or sesame seed buns. Use: Wonder, Sunbeam, Holsum.

Hammer (Graphite Fiber Handle). Smooth head, 16 oz nail hammer, curved or straight claw, with graphite handle. Use: Stanley 51–505.

Hammer (wood handle). 16-oz curved claw, high carbon steel head, black finish, wood handle. Overall length 13 ¼″. This is a typical homeowner's hammer. Do not price hammers with non-wooden handles or those typically used by carpenters or cabinet makers. Use: Stanley 51616, Stanley 51416.

Health club membership. 1 year regular individual membership for EXISTING MEMBER. No special offers. If no yearly rate, price month and prorate. Service must include free weights, cardiovascular equip., and aerobic classes. Note if pool, tennis, racquet ball, or other service included. Use: Health club.

Honda Civic. Purchase price of a 2002 Honda Civic Sedan DX, 4 door, 1.7 liter, 4 cylinder, automatic transmission. Please note the price of any special option packages. Use Worksheet. Use: Honda Civic DX.

Honda License, Reg, & Taxes. License, registration, and periodic taxes (*e.g.,* road or personal property tax, but NOT one-time taxes such as sales tax) on a 2002 Honda Civic Sedan DX, 4 door, 1.7 liter, 4 cylinder, automatic transmission. Use: HONDA MISC TAXES & REGISTRATION.

Hospital Room (Private). Daily charge for a PRIVATE ROOM ONLY. Include food and routine care. Exclude cost of operating room, surgery, medicine, lab fees, etc. Do not price specialty rooms, *e.g.*, those in cardiac care units. Use: Private Room.

Hospital Room (Semi-Private). Daily charge for a SEMI-PRIVATE ROOM ONLY. Include food and routine care. Exclude cost of operating room, surgery, medicine, lab fees, etc. Do not price specialty rooms, *e.g.,* those in cardiac care units, medicine, lab fees, etc. Use: Semi-Private Room.

Hot Dogs. 16 oz package, all beef, USDA graded. Do not price chicken, turkey, extra lean, or fat free frankfurters. Use: Oscar Mayer.

Housekeeping (hourly wage). Local hourly wage for a housekeeper or janitor. Use: Local Government wage data.

Housekeeping Service (Hourly). Hourly rate for one person to clean a private residence on a periodic basis. If hourly rate not available, price job rate, number of people, and total hours required to clean house twice a month. House has 2000 sq. ft., 3 bedrooms, living room, den, kitchen, 2 full baths. Family has 2 adults, 2 children, no pets. Use: Housekeeping Hourly.

Ice Cream (Name brand). ½ gallon (2 QT) vanilla flavored. Not ice milk, fat free, sugar free, or frozen yogurt. Use: Breyer's.

Ice Cream (Store brand). ½ gallon (2 QT) vanilla flavored. Not ice milk, fat free, sugar free, or frozen yogurt. Record brand in comments. Use: Store Brand, Local brand.

Ice Cream Cone. Regular (one scoop) vanilla ice cream cone. Not frozen yogurt or soft-serve ice cream. Use: Ice Cream Cone.

Ice Cream Cone (gourmet). Regular (one scoop) vanilla ice cream cone. Not frozen yogurt or soft-serve ice cream. Use: Ice Cream Cone.

Infant's Sleeper. One-piece sleeping garment with legs, covering the body including the feet. Can be packaged or hanging. Use: Gerber, Playskool, Sesame Street, Store brand.

Insurance, Ford Min. DC AND VI ONLY. Annual minimum premium for Ford. 35-year old married male, currently insured, no accidents/violations. Commuting 15 miles one-way/day, annual 15,000 mi. BI 25/30 PD 25, Med 5 or PIP 25, UM 25/30. Comp 250 deductible. Col 500 deductible. If this level of coverage is not available, price the policy with the closest coverage. Use: FORD INSURANCE MIN.

Insurance, Ford Reg. DC AND PR ONLY. Annual premium for Ford. 35-year old married male, currently insured, no accidents/violations. Commuting 15 miles one-way/day, annual 15,000 mi. BI 100/300, PD 25, Med 15 or PIP 50, UM 100/300. Comp 100 deductible. Col 250 deductible. If this level of coverage is not available, price the policy with the closest coverage. Use: Ford insurance.

Insurance, Honda Min. DC AND VI ONLY. Annual minimum premium for Honda. 35-year old married male, currently insured, no accidents/violations. Commuting 15 miles one-way/day, annual 15,000 mi. BI 25/30 PD 25, Med 5 or PIP 25, UM 25/30. Comp 250 deductible. Col 500 deductible. If this level of coverage is not available, price the policy with the closest coverage. Use: HONDA INSURANCE MIN.

Insurance, Honda Reg. DC AND PR ONLY. Annual premium for Honda. 35-year old married male, currently insured, no accidents/violations. Commuting 15 miles one-way/day, annual 15,000 mi. BI 100/300, PD 25, Med 15 or PIP 50, UM 100/300. Comp 100 deductible. Col 250 deductible. If this level of coverage is not available, price the policy with the closest coverage. Use: Honda insurance.

Insurance, Toyota Min. DC AND VI ONLY. Annual minimum premium for Toyota. 35-year old married male, currently insured, no accidents/violations. Commuting 15 miles one-way/day, annual 15,000 mi. BI 25/30 PD 25, Med 5 or PIP 25, UM 25/30. Comp 250 deductible. Col 500 deductible. If this level of coverage is not available, price the policy with the closest coverage. Use: Insurance, Toyota Min.

Insurance, Toyota Reg. DC AND PR ONLY. Annual premium for Toyota. 35-year old married male, currently insured, no accidents/violations. Commuting 15 miles one-way/day, annual 15,000 mi. BI 100/300, PD 25, Med 15 or PIP 50, UM 100/300. Comp 100 deductible. Col 250 deductible. If this level of coverage is not available, price the policy with the closest coverage. Use: Toyota Insurance Reg.

Internet Service. Monthly charge for unlimited Internet access via standard telephone modem connection. Use: Local provider, AOL, MSN.

Jelly. 18 oz jar of grape jelly. Use: Welch's.

Jet Ski. 2002 Yamaha jet ski XLT800, 120 hp, 2 cylinder, 3 seater. (If only SeaDo GTX is available, record as a substitute). Use: Yamaha (XLT800).

Ketchup. 24 oz plastic squeeze bottle. Use: Heinz.

Kitchen Range (Electric). 30 inch wide electric range. Features upswept cook top, removable coils elements, electronic clock w/ timer, oven light, delay, start cook controls, storage drawer, glass front with see through window, self cleaning oven w/2 oven racks and a porcelain enamel broiler pan. Black door and black panel. Don't use white door. Use: GE Spectra (JBP24BBWH), Maytag Performa (PER5505BAH).

Kitchen Range (Gas). 30″ wide gas, self-cleaning range. Features: upswept cook-top, electronic clock with timer, oven light, large glass front with see-thru window, and a porcelain enamel broiler pan. Color: White-on-white. Use: Whirlpool SF367LEKQ.

Laptop (Compaq). Compaq Presario 720US, 56K, 14.1″ screen, DVD, 64KB, 256MB, (Radio Shack catalog number 25–985). Use: Compaq Presario (720US).

Laptop Computer. Processor: Intel Pentium 4; 2.0 GHz; memory: 512MD DDR SDRAM; storage: 20 GB hard drive; drives: 3.5 floppy diskette drive, 16x/10x/24x CDRW/8x DVD combo; graphics: 14.1″ XGA Monitor. Full sized keyboard and EZ Pad pointing device; operating system: Microsoft® Windows XP; software: Microsoft® Works Suite 2002. Use: Gateway Laptop.

Laundry Soap. 100 fl oz of liquid household laundry detergent. Do not price detergent with bleach or whiteners. Use: Wisk, Tide.

Lawn Care (hourly wage). Local hourly wage for gardener/grounds keeper. Use: Local Government.

Lawn Care Service (hourly). Hourly rate for one person to cut and edge lawn. If hourly rate not available, price job rate, number of people, and total hours required to cut and edge a ¼ acre lawn. Do not include any other services, *e.g.,* fertilizing, raking, watering, weeding. Use: Hour of lawn care service.

Lawn trimmer. Gas powered 31cc two-cycle engine, dual feed line, 16″–17″ wide cut. Straight or curved shaft okay. No brush blade. Bump or semi-automatic line feed. Use: Ryobi 766R or 765R, Weedeater 17″ 25cc trimmer, Homelite UT20811 (17″).

Lawnmower (push). Gas powered 6.5 hp 20″ push (NOT self propelled), mulching lawn mover. Use: Yard Man 106C.

Lawnmower (self-propelled). 21″–22″ self-propelled, 6.5 hp gas lawnmower. Use: Toro/Lawnboy (M20013), Craftsman (37844).

LD Call Chicago. Cost of a 10 min call using regional carrier, recd on a weekday in Chicago at 8:00 p.m. (Chicago time); direct dial. Include any Federal, State, local or excise tax that is applicable. Use: AT&T.

LD Call Los Angeles. Cost of a 10 min call using regional carrier, recd on a weekday in LA at 8:00 p.m. (LA time); direct dial. Include any Federal, State, local or excise tax that is applicable. Use: AT&T.

LD Call New York. Cost of a 10 min call using regional carrier, recd on a weekday in NY at 8:00 p.m. (NY time); direct dial. Include any Federal, State, local or excise tax that is applicable. Use: AT&T.

Lettuce. Price per head of iceberg lettuce. (Note weight of an average head. Note quality.) Use: Available Brand.

Lipstick. One tube. Use: Revlon Super Lustrous, Revlon Moondrops.

Living Room Chair (Catalog). Flexsteel rocker/recliner. Large scale pad-over-chaise, side-handle for reclining. High arms and wide seat. Polypropylene/polyester upholstery. Include shipping and handling. Use: Action Lane.

Living Room Chair (Furniture Store). Flexsteel rocker/recliner. Large scale pad-over-chaise, side-handle for reclining. High arms and wide seat. Polypropylene/polyester upholstery. Use: Living Room Chair.

Lunch full-service (Casual). Cheeseburger platter with fries and small soft drink. Check sales tax and INCLUDE in price. Record burger weight in comments. Use: Cheeseburger Platter.

Lunch full-service (Pancake House type). Cheeseburger platter with fries and small soft drink. Check sales tax and INCLUDE in price. Record burger weight in comments. Use: Cheeseburger Platter.

Lunch Meat. 8 oz pkg. Do not price all beef variety. Use: Oscar Mayer Bologna, Oscar Mayer Cotto Salami.

Magazine subscription. 1-year home delivery price of a magazine. Use: Newsweek, Time.

Magazine, Newsstand-Bookstore. Store price (not publisher's list price unless that is the store price) for a single copy. Use: Time, Newsweek.

Man's athletic shoe (DEPT). Soft leather upper. Full-length Phylon midsole with low-pressure Air-Sole units in heel and forefoot. Composition rubber outsole. Use: Nike Air Essential III, Nike Resolve Plus, Nike Air Jokul, Reebok Classic.

Man's athletic shoe (Shoe Store). Soft leather upper. Full-length Phylon midsole with low-pressure Air-Sole units in heel and forefoot. Composition rubber outsole. Use: Nike Air Essential III, Nike Resolve Plus, Nike Air Jokul, Reebok Classic.

Man's Dress Shirt. White or solid color long sleeve button cuff plain collar dress shirt. Approximately 35%cotton/65%polyester. Use: Arrow, Van Heusen.

Man's Dress Shoe (Leather DEPT). 100% leather uppers, wing tips or plain toe. Leather

sole. Use: Bostonian, Steeplegate, Clark, Rockport, Florsheim.

Man's Dress Shoe (Leather SHOE). 100% leather uppers, wing tips or plain toe. Leather sole. Use: Bostonian, Steeplegate, Clark, Rockport, Florsheim.

Man's Dress Shoe (Rubber Sole CTLG). Men's rubber sole dress shoe, wing tip, Rockport Share. Include shipping and handling. Use: Rockport Share.

Man's Dress Shoe (Rubber Sole SHOE). Men's rubber sole dress shoe, wing tip, Rockport Share. Use: Rockport Share.

Man's Dress Shoe (Rubber Sole) DEPT. 100% leather uppers, wing tips or plain toe. Remaining parts are man-made materials. Lightweight with rubber/EVA sole. Do not price leather sole. Use: Bostonian, Rockport.

Man's Haircut. Typical haircut. Do not include wash. Use: Man's Haircut.

Man's Jeans. Regular loose fit non designer jeans. Do not price bleached or stone washed. Use: Rustler, Wrangler.

Man's khaki pants. Man's casual khakis, any color, flat front or pleated. Cotton twill. Use: Dockers flat front, Dockers pleated.

Man's Khaki Pants (Catalog). Man's khaki pants from a catalog. Flat front or pleated, machine wash. Include shipping and handling. Use: Docker's flat front, Docker's pleated.

Man's Lightweight Jacket (Catalog). Lightweight, breathable, cotton jacket. Front pockets, fully lined, long sleeves, made of cotton and nylon, front zipper, elastic waist. (Use regular sizes, not tall). Include shipping and handling. Use: Lightweight Jacket.

Man's Sport Watch (Discount Store). Quartz movement, water resistant, digital watch with 2 or 3 alarms, lap counter, timer, INDIGLO night-light, leather, plastic, and/or fabric band. Use: Timex Expedition T73601, 107350.

Man's Suit-Catalog. Double-breasted worsted wool, ventless back. Black, regular suit. Inside pocket and full acetate lining. Include shipping and handling. Use: Catalog brand.

Man's Suit-Dept Store. Double-breasted worsted wool, ventless back. Black, regular suit. Inside pocket and full acetate lining. Use: Store brand.

Man's Undershirt. 1 package (of 3) Men's t-shirts. V-neck. White 100% cotton undershirts with short sleeves. Use: Hanes, Fruit of the Loom.

Man's watch (Dept Store). Sweep second hand and date window. Has Eco-Drive mechanism, which charges in sunlight or indoors and maintains a 180 day power reserve. Use: Citizen ECO-drive (BM0310–54L), Citizen ECO-drive (BM8080–59M).

Man's watch (Jewelry Store). Sweep second hand and date window. Has Eco-Drive mechanism, which charges in sunlight or indoors and maintains a 180 day power reserve. Use: Citizen ECO-drive (BM0310–54L), Citizen ECO-drive (BM8080–59M).

Man's Wed Band Non-Cmfrt-Jewelry. Men's 14K gold 4mm plain wedding band, size 10 or less, non-comfort fit. Do not price gold-filled rings. Use: man's noncomfort fit ring.

Man's Wed Band Non-Cmft-Dept. Men's 14K gold 4mm plain wedding band, size 10 or less, non-comfort fit. Do not price gold-filled rings. Use: Store brand.

Man's Wedding Band-Cmfrt fit-Dept. Men's 14K solid gold, 4mm wide, plain wedding band, size 10 or less, comfort fit. Do not price gold-filled rings. Use: Store Brand.

Man's Wedding Band-Cmfrt fit-Jewel. Men's 14K solid gold, 4mm wide, plain wedding band, size 10 or less, comfort fit. Do not price gold-filled rings. Use: store brand.

Margarine. 1 pound (4 sticks) regular margarine. Do not price reduced fat variety. Use: Parkay, Fleishman's.

Mattress and Foundation (Catalog). Queen-size mattress and foundation. Quilted cotton/polyester blend layers. Thick layers of convoluted polyfoam. Innerspring system. Mattress thickness, 9¼″, 448 coils. Wood reinforced foundation. Include shipping and handling. Use: Sealy Posture Premier Generation.

Mattress and Foundation (Furn). Queen-size mattress and foundation. Quilted cotton/polyester blend layers. Thick layers of convoluted polyfoam. Innerspring system. Mattress thickness, 9¼″, 448 coils. Wood reinforced foundation. Use: Sealy Posture Premier Generation

Mayonnaise. 32 oz jar of mayonnaise. Use: Kraft, Hellmann's.

Meat, Chuck Roast. Price per pound of an average size USDA graded package. Do not price family-pack, value-pack, super-saver pack or equivalent. Do not price frozen roast. Use: Chuck roast with bone.

Meat, Ground Beef (90% lean). Price per pound, fresh (not frozen or previously frozen) USDA graded lean ground beef (approximately 10 percent fat). Use average size package. Not family-pack, value-pack, super-saver pack, or equivalent. Use: Lean Ground Beef (10% fat).

Meat, Ground Beef (95% lean). Price per pound of 95% lean. (5% fat) ground beef. Do not price choice. Use Select. Use average size package. Not family-pack, value-pack, super-saver pack, or equivalent. Use: Ground beef.

Meat, Ground Chuck or 20% Ground Beef. Price per pound, fresh (not frozen or previously frozen) USDA graded ground chuck or approximately 20% fat ground beef. Use average size package. Not family-pack, value-pack, super-saver pack, or equivalent. Use: Ground chuck or 20% ground beef.

Meat, Pork Chops bone-in. Price per pound of an average size USDA graded package of loin chop with bone. Do not price family-pack, value-pack, super-saver pack or equivalent. Do not price frozen chops. Use: Loin chop with bone.

Meat, Pork Chops boneless. Price per pound of an average size USDA graded (select not choice) package of center cut rib chop without bone. Do not price family-pack, value-pack, super-saver pack or equivalent. Do not price frozen chops. Use: Center cut, rib chop.

Meat, Round Roast. Price per pound of fresh (not frozen or previously frozen) USDA graded, average size package. Not family-pack, value-pack, super-saver pack, or equivalent. Use: Eye round roast, boneless.

Meat, Round Steak. Price per pound, fresh (not frozen or previously frozen) USDA graded average size package. Not family-pack, value-pack, super-saver pack or equivalent. Use: Boneless Top Round.

Meat, Sirloin Steak. Price per pound of fresh (not frozen or previously frozen) USDA graded, average size package. Not family-pack, value-pack, super-saver pack, or equivalent. Use: Boneless sirloin.

Meat, Sliced Bacon. 16 oz package USDA grade, regular slice. Not Canadian bacon, extra thick sliced, or extra lean. Use: Hormel, Armour.

Milk, 2%. One gallon (128 fl oz), 2%. Record brand in comments. Use: Store Brand 2% Milk, Local Brand.

Milk, Whole. One gallon (128 fl oz), whole milk. Record brand in comments. Use: Store brand, Local brand.

Mover driver (hourly wage). Local Government hourly rate for truck driver light. Use: mover driver Local Government.

Moving (hourly wage). Local hourly wage for a mover. If none available, use material handler. Use: Local Government wage data.

Moving Service (Hourly). Hourly rate for a within city move, two men with an enclosed van. Include any van rental fees if charged separately. Do not include extra insurance or special packaging options. If company requires more than two men, report the number of men in comments. Use: Moving Service.

Newspaper, Home Delivery. 1 year of home delivery of the largest selling daily regional paper (including Sunday edition) distributed in the area. Do not include tip. Use: Newspaper.

Newspaper, newsstand. Price of newspaper at a newsstand (in box). Use: Newspaper Newsstand.

Non-Aspirin Pain Reliever. 60 tablets of extra-strength acetaminophen. Not caplets or gel caps. If number of tablets differs, note and prorate. Use: Tylenol, Excedrin-Free.

Oranges. Price per pound of loose oranges. If only bagged oranges are available, also report the weight of the bag. Note quality. Use: Valencia.

Outboard Motor. 15 hp, 2 cycle, standard shaft, rope start, outboard motor suitable for use on an inflatable dinghy. Use: Mercury.

Parcel Post to Chicago. Cost to mail a 5 pound package to Chicago using regular mail delivery service. Use: Parcel Post to Chicago.

Parcel Post to Los Angeles. Cost to mail a 5 pound package to Los Angeles using regular mail delivery service. Use: Parcel Post to Los Angeles.

Parcel Post to New York. Cost to mail a 5 pound package to New York using regular mail delivery service. Use: Parcel Post to New York.

Pearl Earrings (Dept Store). Pair 6 mm cultured or fresh water pearl earrings with gold post. If not available, but 4, 5, 7, or 8 mm are available, record each separately as a substitute. Use: Store Brand.

Pearl Earrings (Jewelry Store). Pair 6 mm cultured or fresh water pearl earrings with gold post. If not available, but 4, 5, 7, or 8 mm are available, record each separately as a substitute. Use: Store Brand.

Pen. 10 pack round stick medium point pen. Not Crystal or clear type. Use: Bic Round Stic, Paper Mate.

Pet food. 5.5 oz can of cat food. Use: Purina, 9 Lives, Friskies, Whiskas.

Piano lesson. One-half hour beginner private lesson. Price through a music studio if possible. Use: Piano Lesson.

Plant Food. 24 oz container of granulated indoor plant food. Use: Miracle Grow.

Potato Chips. 5.5–6 oz bag of regular potato chips. Use: Ruffles Potato Chips, Lay's Potato Chips.

Potatoes. Price per pound of loose potatoes. If only bag potatoes available, report smallest size as substitute and note weight. Use: Russet baking, White.

Prescription Drug 1. 20 mg of 30 capsules of non-generic Prilosec. Use: Prilosec.

Prescription Drug 2. 250 mg of 30 capsules of generic Amoxicil (survey Amoxicillin). Use: Amoxicillin.

Printer. Color inkjet printer, 2400 X 1200 dpi, up to 9 ppm b/w; 7.5 ppm color. Use: HP DeskJet 920c.

Printer, Color. 2880 x 720 dpi print resolution, 12ppm black & white; 5.5ppm color, USB cable included (a $10 value), Microsoft Windows 98 / Me / 2000 / XP. Use: Printer, Color (Gateway).

Printer, Color (HP). Color DeskJet printer, 2400 X 1200 dpi, up to 12 ppm b/w; 10 ppm color. Use: Epson Stylus C42UX (Gateway), HP DeskJet 940c.

Red Roses. One dozen long stemmed, fresh cut red roses wrapped in floral paper. Purchased not delivered. Not boxed or arranged in vase. Use: Dozen red roses.

Refrigerator. No frost top mount 20.5—21.5 cu ft refrigerator with reversible doors, glass shelves, moisture controlled crisper drawers, and meat drawer. Door contains 1 or more covered compartments, and adjustable bins. Freezer has adjustable wire shelves, door bins, but no ice maker. Use: Whirlpool Top Mount ET1MTKXKQ.

Refrigerator with ice maker. No frost top mount 20.5—21.5 cu ft refrigerator with reversible doors, glass shelves, moisture controlled crisper drawers, and meat drawer. Door contains 1 or more covered compartments, and adjustable bins. Freezer has adjustable wire shelves, door bins, with ice maker. Use: Whirlpool (ET1MTKXKQ), Whirlpool (ET1MTMXKQ).

Rental Data. Rental averages from Hedonic Regressions. Use: Rental Data (OPM).

Renter Insurance 1. HO–4 renters insurance coverage for $25,000 of contents. Policy must cover hurricane, earthquake, and other catastrophic damage. Use: Renter's Insurance Low.

Renter Insurance 2. HO–4 renters insurance coverage for $30,000 of contents. Policy must cover hurricane, earthquake, and other catastrophic damage. Use: Renter's Insurance Middle.

Renter Insurance 3. HO–4 renters insurance coverage for $35,000 of contents. Policy must cover hurricane, earthquake, and other catastrophic damage. Use: Renter's Insurance Upper.

Rice—Long Grain. 5 pound bag of long grain enriched white rice. Do not price converted or minute rice. Record brand in comments. Use: Uncle Ben's.

Rice—Medium Grain. 3 pound bag of medium grain white rice—NOT converted or parboiled. Use: Sello Rojo, Goya.

Salt. 26 oz box of iodized salt. Not sea-salt, kosher-style, etc. Record brand in comments. Use: Morton.

Shampoo. 15 oz bottle for normal hair. Use: Suave, VO5, White Rain.

Sheets. 230–250 thread count cotton or cotton polyester blend. QUEEN size fitted or flat sheet, Not a set. Use: Martha Stewart, Store Brand.

Shop Rate, Ford. Hourly shop rate for a mechanic at a Ford dealership. Use: Hourly Shop Rate, Ford.

Shop Rate, Honda. Hourly shop rate for a mechanic at a Honda dealership. Use: Hourly shop rate, Honda.

Shop Rate, Toyota. Hourly shop rate for a mechanic at a Toyota dealership. Use: Hourly shop rate, Toyota.

Snack cake. 1 box (8 or 10 to a box) cream-filled type cake desserts. Not fresh baked desserts, individual servings, or larger family-style containers. Use: Hostess Twinkies, Hostess Cupcakes.

Soft Drink. 2 liter plastic bottle. Use: Coca-Cola, Pepsi.

Soy Milk. One quart soy milk—plain, not flavored. Use: Vitasoy, Silk Soy.

Spaghetti, Dry. 16 oz box or bag. Do not price store brand. Use: San Giorgio, Mueller's, Ronzoni.

Stamp. Cost of mailing a one ounce letter first class. Use: First Class Stamp.

Sugar. 5 pound bag of granulated cane or beet sugar. Do not price superfine or generic. Record brand in comments. Use: Store Brand, Local Brand.

Tax Preparation. Flat rate for preparing individual tax Federal 1040 (long form), Schedule A, plus State or local equivalents. (Note: Some areas only have local income taxes.) Note number of forms in comments. Assume typical itemized deductions. If only hourly rate available, obtain estimate of the time necessary to prepare forms, prorate, and report as a substitute. Not a CPA. Use: Tax Preparation.

Taxi Fare. 5 miles cab fare, one way, from major airport. Include fare for only 1 passenger with 2 suitcases. (In DC, use Dulles, BWI and National.) Include applicable taxes and record in comments. Not tourist zone. Use: Taxi Fare.

Telephone Service. Monthly cost for unmeasured touchtone service. Include tax. Exclude options such as call waiting, call forwarding or fees for equipment rental. Use: Local phone service.

Television 20″. 20″ color TV w/front AV inputs, remote, and approximately 181 channel tuning. NOT stereo and NOT flat screen. Note: Model numbers may vary by dealer. If 20'' not available, price 19'' as a substitute. Use: RCA F20648, JVC 2310.

Television 27″. 27″ color television with remote control, auto channel, sleep timer, on-screen menus, auto tuning. Use: Panasonic (CT27G7D).

Tennis Balls. One can, 3 heavy-duty yellow felt. Not special gas-filled or premium type. Use: Wilson, Penn.

Tennis club membership. 1 yr reg. individual membership for EXISTING MEMBER. No special offers. If no yearly rate, price month & prorate. Service must be limited to use of courts and tennis clubhouse (if existent). Use: Tennis Club.

Tires, Ford Reg. One black sidewall tire for the Ford Explorer XLT, size (P235/70R x16SL OWL A/S), ''original equipment'' quality. Do not include mounting, balancing, or road hazard warranty. Use: Goodyear, Michelin, Goodrich.

Tires, Honda Reg. One black sidewall tire for the Honda Civic DX, size (P185/70 R14 87S), ''original equipment'' quality. Do not include mounting, balancing, or road hazard warranty. Use: Michelin, BF Goodrich, Goodyear.

Tires, Toyota Reg. One black side wall tire for the Toyota Camry LE, size (P205/65 R15), ''original equipment'' quality. Do not include mounting, balancing, or road hazard warranty. Use: Goodyear, Michelin, BF Goodrich.

Toilet Tissue. 12-roll pack. Use: Charmin.

Tomatoes. Price per pound of medium-size tomatoes. If only available in celo pack, note price and weight of average size package. Not organic, 'hydro', plum, or extra fancy tomatoes. Note quality. Use: Available Brand.

Toyota Camry. Purchase price of a 2002 Toyota Camry LE, 4 door, 2.4 liter, 4 cylinder, automatic transmission. Please note the price of any special option packages. Use Worksheet. Use: Toyota Camry LE.

Toyota License, Reg, & Taxes. License, registration, and periodic taxes (*e.g.*, road or personal property tax, but NOT one-time taxes such as sales tax) on a 2002 Toyota Camry LE, 4 door, 2.4 liter, 4 cylinder, automatic transmission. Use: Toyota Misc Taxes & Registration.

Two-Slice Toaster. Two-slice toaster, cool-touch body (not chrome), wide slot (for bagels), pastry defrost setting. Use: Proctor Silex 22425, Proctor Silex 22420, Proctor Silex 22415, Proctor Silex 22447.

Veterinary Services. Routine annual exam for a small dog (approx. 25 to 30 pounds.) No booster shots, medication, or other extras such as nail clipping, ear cleaning, etc. Use: Vet services.

Video Recorder. 4-head Hi-Fi Stereo, on-screen programming, front A/V jacks, and universal remote. NOT Super VHS. Note: Model numbers may vary by dealer. Use: Sony (SLV–N55), JVC HRJ691U, RCA VR637HF.

Video Rental. One video tape, 1-day or minimum rental rate for Saturday night. Non-member fee. Do not price new releases, oldies or classics where price is different from a regular rental. Use: Video Rental.

Wash, Single Load. One load, regular size, top loading washing machine. Exclude drying. Use: Coin laundry.

Washing machine. Features 12 cycle super capacity washer with 3 water temps. 3.0–3.2 cubic ft. with fabric softener and bleach dispenser. 2 or more speed combination. Use: GE WBSE3120B.

Washing machine (8 cycle). Features 8 cycle super capacity washer (3.0–3.2 cu. ft), 3 water temps, 3 water levels, w/fabric softener and bleach dispenser. Color: White-on-white. Use: Whirlpool LSR8433KQ.

Water Bill. Rate schedule for water and sewer including any related charges, taxes, customer service charges, etc. Obtain sample local water bill, if possible. Use: worksheet.

Will Preparation. HOURLY RATE to prepare a simple will. Not paralegal. If large firm, not partner. Use: Legal service: will or trust.

Window Mini-blind. Approximately 36″ wide by 64″ long. Room darkening vinyl, medium weight. Color: White. Use: Main Fine USA model #MD3664W.

Window Shade. Room darkening, medium weight, pull-down shade. Approx. 37″ wide

x 66″ long (usually free to cut smaller). Use: Store brand.

Wine at Home 1. 750 ml of Chardonnay wine. Vintage 2000. Use: Fetzer.

Wine at Home 2. 750 ml of Chardonnay wine, any vintage (Note vintage in comments). Use: Turning Leaf.

Wine Away-(CH type). One glass of house white wine at Chart House type restaurant where meal is also priced. Use: House Wine.

Wine Away-(RC type). One glass of house white wine at Ruth's Chris type restaurant where meal is also priced. Use: House Wine.

Wine Away-Casual. One glass of house white wine at casual restaurant where meal is also priced. Use: House brand.

Woman's Athletic Shoes-Dept. Walking shoe for women. Soft leather upper. Full-length Phylon midsole with low-pressure Air-Sole units in heel and forefoot. Composition rubber outsole. Use: New Balance 554 or 608, Nike Air Essential III, Reebok classic.

Woman's Athletic Shoes-Shoe Store. Walking shoe for women. Soft leather upper. Full-length Phylon midsole with low-pressure Air-Sole units in heel and forefoot. Use: New Balance 554 or 608, Nike Essential III, Reebok Classic.

Woman's Blouse (Linen)-Catalog. 100% linen shirt, button cuffs, side vents, machine washable. Include shipping and handling. Use: Linen shirt.

Woman's Blouse (Linen)-Dept. 100% washable linen, short sleeve or sleeveless, button front blouse with minimum trim. Use: Laura Scott, Ashley Stewart, Lane Bryant, Liz Baker, Notations.

Woman's Blouse (Polyester)-Dept. 100% polyester short sleeve, button front blouse with minimum trim. Washable. Use: Laura Scott, Liz Baker, Notations, Impressions.

Woman's blue jeans. Blue jeans. Machine washable, 5 pocket with zipper fly, loose fit, straight leg or tapered. Use: Levi's red tab 550's relaxed, Levi's 577 jeans.

Woman's Casual Khakis. Woman's casual khakis, any color, flat front or pleated pant, machine washable. Use: Dockers Flat Front, Dockers Pleated.

Woman's cut and style. Wash, cut, and styled blow dry. Exclude curling iron if extra. Price hair salons in major department stores and malls. Use: Woman's Haircut.

Woman's Dress (Jersey, Catalog). Jersey dress, ¾ length sleeves, 100% polyester, machine washable. Include shipping and handling. Use: Jersey Dress.

Woman's Dress (Lined Dept Store). Sheath style, fully lined dress appropriate for office. 100% washable linen. Princess seams and padded shoulders. Back zip and walking vent. Washable. Short sleeve, or sleeveless. Use: Store brand, Sag Harbor.

Woman's Dress (unlined Catalog). Tank Dress, straight, sleeveless with side slits, linen/cotton blend. By Liz Baker. Include shipping and handling. Use: Linen/cotton Tank dress.

Woman's Dress (Unlined Dept Store). Sheath style, unlined. 100% cotton or polyester blend. Princess seams and padded shoulders. Back zip and walking vent. Washable. Short sleeve, or sleeveless. Use: Sag Harbor.

Woman's jacket (Catalog). Microfiber jacket, button off hood. Front pockets, convertible collar, polyester/nylon lining, washable. Include shipping and handling. Use: Available catalog brand.

Woman's jeans (CK type). Designer jeans, machine washable, 5 pocket with zip fly. Loose fit, straight leg or tapered. Use: Calvin Klein Easy Straight Leg, Calvin Klein Classic.

Woman's Pump (Catalog). Woman's pump, 2¼ inch heel. (A. Oprah) from JCPenney catalog. Include shipping and handling. Use: Oprah.

Woman's Pump Shoes-Dept. Plain pump (not open toed or open back style), tapered approx. 2″ heel matches shoe (not stacked/wooden type), leather uppers, the remaining parts are man-made materials. No extra ornamentation, extra thick heels, and wedge-type heel. Do not price leather sole shoe. Use: JCPenney's Worthington, Sears Apostrophe, Easy Spirit, Shoebox Store Brand.

Woman's Sweater (Catalog). Cardigan long-sleeve sweater, cotton/nylon/spandex blend, machine washable. Include shipping and handling. Use: Cardigan.

Woman's Sweater (Dept). Long sleeve button down v neck cardigan sweater. 100% cotton or cotton blend. Use: Carolyn Taylor, Designer Original, Apostrophe, Karen Scott, Laura Scott.

Woman's Wallet. Clutch/checkbook style wallet. Split-grain, cowhide leather. Not eel skin, snake skin or other varieties. Use: Buxton, Mundi, Princess Gardner.

Woman's Wallet (fashion brand). Clutch/checkbook style wallet. Split-grain, cowhide leather. Do not price eel skin, snake skin or other varieties. Use: Liz Claiborne, Kenneth Cole.

APPENDIX 4—COLA RENTAL SURVEY DATA COLLECTION ELEMENTS

Data element	Description of data
Comparable identification code*	Unique identification code that can be associated with photographs.
Comparable's address*	Complete location address of the comparable, including ZIP code, NOT Post Office Box.
How initially identified*	Internet, broker, drive-by, newspaper, published rental listing (*e.g.*, as often found in supermarkets), other.
Person providing information, if applicable.	Name and title of person providing information about the comparable. Examples of title: agent, landlord, tenant.
Address, etc. of person providing information.	Complete mailing address, phone number(s), and e-mail address, as appropriate, of person providing information about the comparable.
Community name, if applicable	Name of community in which comparable is located.
Year built	Year built or year of last remodeling affecting 50% or more of the structure.
Finished space*	Total square feet of finished space (*i.e.*, living-area).
Basement*	Yes/no.
Bedrooms*	Number of bedrooms.
Bathrooms*	Number of bathrooms (½bath is toilet and sink; full bath is toilet, sink, shower, and/or tub).
Balcony*	Covered, uncovered, none. Covered, uncovered, none.
Patio*	Covered, uncovered, none.
External condition*	Excellent, good, poor. Excellent condition means the unit is new or like new condition (*e.g.*, recently remodeled, refurbished, or restored). Good condition means the unit shows signs of age but is in good repair (*e.g.*, the paint is not peeling, there are no broken windows, sagging fences, or missing gutters; the yard is maintained; and there are no disabled cars, appliances, or other trash around the property). Poor condition means the unit is habitable but needs repair and the property needs maintenance and/or trash removal.
Neighborhood condition*	Desirable, average, undesirable. A desirable neighborhood generally has homes in excellent or good condition. Commercial services are separate (*e.g.*, clustered in strip malls or business parks). There are many parks and/or open public spaces. Roads and parks are well-maintained and clean. Other public services, including schools, are believed to be good; and the crime rate is perceived to be low. An average neighborhood generally has homes in good condition with a balance of homes in excellent and poor condition. Commercial services are separate. Roads and parks are in good condition but may need cleaning or maintenance. Other public services are perceived to be acceptable but not exceptional. An undesirable neighborhood generally has homes in poor condition. Commercial units may be intermingled with residential units. Roads are often crowded and/or poorly maintained and have litter. There are few parks and those are also poorly maintained. Other public services are believed to be marginal; and crime rate is perceived to be high.

APPENDIX 4—COLA RENTAL SURVEY DATA COLLECTION ELEMENTS—Continued

Data element	Description of data
Heating fuel*	Primary heating fuel (*e.g.*, electricity, natural gas, propane, fuel oil, wood, other).
Central air conditioning*	Yes/no. Central air is a ducted system designed to cool all or essentially all of a house or apartment.
Multi-room air conditioning*	Yes/no. If yes and if available, report number of multi-room units. Multi-room air conditioning is a non-window unit designed to cool more than one room but not all of a house or apartment.
Window air conditioning*	Yes/no. If yes and if available, report number of window-type air conditioning units.
Exterior construction*	Exterior construction materials (*e.g.*, brick, stone, cement, block, wood, metal or vinyl siding).
Garage*	Triple (or more), double, single, none.
Carport*	Yes/no.
Reserved parking	Yes/no.
Security*	Gated community, guard, alarm system, none.
Type of unit*	Single family home, duplex, triplex, townhouse/row house, apartment (3 floors or less), high rise apartment (4 floors or more), other.
Furnishings provided by landlord*	Yes/no.
Appliances provided by landlord*	Yes/no. If yes and information is available, report if refrigerator, range, oven, dishwasher, clothes washer, clothes dryer, and/or freezer provided.
Services paid by landlord*	Water, sewer (includes septic), garbage collection, lawn care, cable television, satellite dish, electricity, heating fuel, firewood, snow removal.
Water source	Public, well, cistern, none.
Sewer	Public, septic, none.
Fireplace	Yes/no.
Paved road*	Yes/no.
Sidewalks*	Yes/no.
Streetlights*	Yes/no.
Complementary recreation facilities*	Yes/no. If yes, note complementary (*i.e.*, free) swimming pools, club houses, tennis courts, or other significant recreational facilities available.
Pets	Yes/no. Yes, if dogs, cats, or both allowed; else no.
Exceptional view*	Yes/no. A view of a park, ocean, mountain, valley, golf course, etc., that is unusually beautiful for the area and may increase the rental value of the property. [Note: Properties with direct access to such an amenity are not comparables and must not be surveyed.]
Vacant	Yes/no. If vacant and if known, report how long unit has been on market.
Rent*	Rental or lease amount per month.
Date of listing*	Date associated with rental rate reported above.
Other fees and charges*	Additional periodic fees or charges that the tenant pays, *e.g.*, parking fees, condo fees, pet fees. Do not include deposits, first/last month's rent, utilities, tenant's insurance, or discretionary fees (*e.g.*, cable TV, community pool membership).
Comment	Additional information that helps clarify above data elements as they apply to the comparable.

*Required.

Appendix 5—Hedonic Rental Data Equations and Results

```
Data TempFile;
StCroix=0; StTomJohn=0; PuertoRico=0;
  ExtConAvg=0; ExtConGood=0; HighRise=0;
  Apartment=0; Neighbrhd=0;
  Unfurnished=0; NoPets=0; PayParking=0;
  SqftxApartment=0; SqftxHighrise=0;
  SqftxHouse=0; BathxApartment=0;
  BathxHighRise=0; BathxHouse=0;
  BedxHouse=0; BedxNonhouse=0;
  AgexHouse=0; AgexNonhouse=0;
if island='1-Croix' then StCroix=1;
if island='2-JonTho' then StTomJohn=1;
if island='3-P.Rico' then PuertoRico=1;
/* if island='4-DC-Base' then dc=1;—Make
  DC base area*/
if extrcond='A' then ExtConGood=1;
if extrcond='B' then ExtConAvg=1;
/* if extrcond='C' then poor=1;—Make poor
  base condition*/
if unit='APART' then Apartment=1;
if unit='HIGH' then HighRise=1;
/* if unit='HOUSE' then house=1;—Make
  house base type unit*/
if neighbor='DESIRABLE' THEN
  Neighbrhd=1;
IF FURNITURE='N' THEN Unfurnished=1;
IF PETS='N' THEN NoPets=1;
IF PARKING='no' then PayParking=1;
if unit='APART' then
  SqftxApartment=sqfootage;
if unit='HIGH' then SqftxHighRise=sqfootage;
if unit='HOUSE' then SqftxHouse=sqfootage;
if unit='APART' then
  BathxApartment=baths;
if unit='HIGH' then BathxHighRise=baths;
if unit='HOUSE' then BathxHouse=baths;
if unit='HOUSE' then BedxHouse=bedrooms;
if unit ne 'HOUSE' then BedxNonhouse =
  bedrooms;
if unit='HOUSE' then AgexHouse=age;
if unit ne 'HOUSE' THEN AgexNonhouse =
  age;
PROC REG DATA=TempFile;
  MODEL lrent = StCroix—AgexNonhouse;
TITLE '2002 Caribbean Rental Data—Federal
  Register Model'; Run;
```

2002 CARIBBEAN RENTAL DATA—FEDERAL REGISTER MODEL

[The REG procedure dependent variable: lrent]

[Analysis of variance]

Source	DF	Sum of squares	Mean square	F value	Pr > F
Model	21	338.1567	16.1027	318.95	<.0001
Error	1585	80.0202	0.05049		
Corrected Total	1606	418.1769			

Root MSE	0.22469	R-Square	0.8086
Dependent Mean	7.03641	Adj R-Sq	0.8061
Coeff Var	3.19326		

PARAMETER ESTIMATES

Variable	DF	Parameter estimate	Standard error	t value	Pr > |t|
Intercept	1	6.33288	0.09064	69.87	<.0001
StCroix	1	−0.40677	0.0275	−14.79	<.0001
StTomJohn	1	−0.18449	0.02555	−7.22	<.0001
PuertoRico	1	−0.4319	0.01824	−23.68	<.0001
ExtConAvg	1	0.2285	0.08049	2.84	0.0046
ExtConGood	1	0.34187	0.08118	4.21	<.0001
HighRise	1	−0.1148	0.06361	−1.8	0.0713
Apartment	1	−0.38439	0.0507	−7.58	<.0001
Neighbrhd	1	0.23193	0.01527	15.19	<.0001
Unfurnished	1	−0.13775	0.02323	−5.93	<.0001
NoPets	1	−0.03661	0.0121	−3.03	0.0025
PayParking	1	−0.01242	0.01319	−0.94	0.3464
SqftxApartment	1	0.000686	5.92E–05	11.58	<.0001
SqftxHighrise	1	0.000453	8.11E–05	5.58	<.0001
SqftxHouse	1	0.000272	2.1E–05	12.97	<.0001
BathxApartment	1	0.09979	0.02694	3.7	0.0002
BathxHighRise	1	0.16166	0.04187	3.86	0.0001
BathxHouse	1	0.11183	0.01405	7.96	<.0001
BedxHouse	1	0.04518	0.01415	3.19	0.0014
BedxNonhouse	1	0.02504	0.01498	1.67	0.0949
AgexHouse	1	0.0013	0.000199	6.55	<.0001
AgexNonhouse	1	−0.00047	0.000422	−1.12	0.2610

APPENDIX 6—FINAL LIVING-COST RESULTS FOR PUERTO RICO

MEG	PEG	MEG weight (percent)	PEG weight (percent)	PEG index	MEG index
1. Food		13.16			101.83
	Cereals and bakery products		7.45	105.65	
	Meats, poultry, fish, and eggs		11.16	99.40	
	Dairy products		4.94	124.86	
	Fruits and vegetables		5.56	107.05	
	Processed foods		11.68	106.42	
	Other food at home		3.16	92.62	
	Nonalcoholic beverages		3.74	133.21	
	Food away from home		45.04	91.91	
	Alcoholic beverages		7.28	123.96	
	PEG Total		100.00		
2. Shelter and Utilities		31.30			80.44
	Shelter		89.67	66.57	
	Energy Utilities		8.46	236.07	
	Water and other public services		1.87	41.54	
	PEG Total		100.00		
3. Household Furnishings and Supplies		6.06			98.84
	Household operations		22.51	64.95	
	Housekeeping supplies		17.53	113.20	
	Textiles and Area Rugs		4.16	93.40	
	Furniture		17.39	95.70	
	Major appliances		6.03	116.32	
	Small appliances, misc. hsewares		3.46	108.32	
	Misc. household equipment		28.91	114.40	
	PEG Total		100.00		
4. Apparel and services		4.00			112.80
	Men and boys		18.69	107.05	
	Women and girls		41.66	114.32	
	Children under 2		4.55	103.86	
	Footwear		17.48	88.96	
	Other apparel products and svcs		17.63	141.24	
	PEG Total		100.00		
5. Transportation		16.93			107.51
	Motor Vehicle Costs		53.67	109.17	
	Gasoline and motor oil		16.02	84.24	
	Maintenance and repairs		10.72	94.31	
	Vehicle insurance		10.24	122.13	

APPENDIX 6—FINAL LIVING-COST RESULTS FOR PUERTO RICO—Continued

MEG	PEG	MEG weight (percent)	PEG weight (percent)	PEG index	MEG index
	Public transportation		9.35	136.92	
	PEG Total		100.00		
6. Medical		4.44			73.30
	Health insurance		46.97	59.73	
	Medical services		32.31	72.76	
	Drugs and medical supplies		20.72	104.88	
	PEG Total		100.00		
7. Recreation		6.23			102.99
	Fees and admissions		23.38	95.96	
	Television, radios, sound equip		12.38	115.85	
	Pets, toys, and playground equip.		18.48	98.43	
	Other entertainment supplies, etc.		15.57	106.71	
	Personal care products		11.10	98.89	
	Personal care services		11.29	105.17	
	Reading		7.80	109.76	
	PEG Total		100.00		
8. Education and Communication		4.09			132.89
	Education		5.06	216.35	
	Communications		79.32	132.97	
	Computers and computer services		15.62	105.41	
	PEG Total		100.00		
9. Miscellaneous		13.79			103.10
	Tobacco products and supplies		3.51	87.91	
	Miscellaneous		15.12	123.28	
	Personal insurance and pensions		81.37	100.00	
	PEG Total		100.00		
Overall Price Index	MEG Total	100.00			96.60
Plus Adjustment Factor					7.00
Final Living-Cost Index					103.60

APPENDIX 7—FINAL LIVING-COST RESULTS FOR THE U.S. VIRGIN ISLANDS

MEG	PEG	MEG weight (percent)	PEG weight (percent)	PEG index	MEG index
St. Croix, U.S. Virgin Islands 2002 Survey Results					
1. Food		13.16			116.05
	Cereals and bakery products		7.45	129.89	
	Meats, poultry, fish, and eggs		11.16	129.25	
	Dairy products		4.94	155.69	
	Fruits and vegetables		5.56	108.80	
	Processed Foods		11.68	128.02	
	Other food at home		3.16	108.01	
	Nonalcoholic beverages		3.74	132.85	
	Food away from home		45.04	105.82	
	Alcoholic beverages		7.28	99.25	
	PEG Total		100.00		
2. Shelter and Utilities		31.30			97.01
	Shelter		89.67	70.99	
	Energy Utilities		8.46	343.31	
	Water and other public services		1.87	230.60	
	PEG Total		100.00		
3. Household Furnishings and Supplies		6.06			126.20
	Household operations		22.51	58.68	
	Housekeeping supplies		17.53	138.03	
	Textiles and Area Rugs		4.16	98.61	
	Furniture		17.39	141.31	
	Major appliances		6.03	127.13	
	Small appliances, misc. hsewares		3.46	101.87	
	Misc. household equipment		28.91	169.19	
	PEG Total		100.00		
4. Apparel and services		4.00			102.52
	Men and boys		18.69	115.94	
	Women and girls		41.66	98.51	
	Children under 2		4.55	83.57	
	Footwear		17.48	97.20	
	Other apparel products and svcs		17.63	107.95	
	PEG Total		100.00		

APPENDIX 7—FINAL LIVING-COST RESULTS FOR THE U.S. VIRGIN ISLANDS—Continued

MEG	PEG	MEG weight (percent)	PEG weight (percent)	PEG index	MEG index
5. Transportation		16.93			111.02
	Motor Vehicle Costs		53.67	112.02	
	Gasoline and motor oil		16.02	73.46	
	Maintenance and repairs		10.72	88.94	
	Vehicle insurance	10.24	119.53		
	Public transportation		9.35	185.59	
	PEG Total		100.00		
6. Medical		4.44			102.16
	Health insurance		46.97	110.99	
	Medical services		32.31	83.05	
	Drugs and medical Supplies		20.72	111.93	
	PEG Total		100.00		
7. Recreation		6.23			107.72
	Fees and admissions		23.38	85.81	
	Television, radios, sound equip		12.38	94.05	
	Pets, toys, and playground equip		18.48	124.46	
	Other entertainment supplies, etc		15.57	118.42	
	Personal care products		11.10	120.92	
	Personal care services		11.29	107.77	
	Reading		7.80	115.28	
	PEG Total		100.00		
8. Education and Communication		4.09			173.59
	Education		5.06	268.97	
	Communications		79.32	180.93	
	Computers and Computer Services		15.62	105.41	
	PEG Total		100.00		
9. Miscellaneous		13.79			105.08
	Tobacco products and supplies		3.51	52.54	
	Miscellaneous		15.12	144.64	
	Personal insurance and pensions		81.37	100.00	
	PEG Total		100.00		
St. Thomas/St. John, U.S. Virgin Islands 2002 Survey Results					
1. Food		13.16			116.71
	Cereals and bakery products		7.45	128.17	
	Meats, poultry, fish, and eggs		11.16	130.42	
	Dairy products		4.94	159.21	
	Fruits and vegetables		5.56	118.71	
	Processed Foods		11.68	136.14	
	Other food at home		3.16	111.80	
	Nonalcoholic beverages		3.74	137.86	
	Food away from home		45.04	103.26	
	Alcoholic beverages		7.28	96.91	
	PEG Total		100.00		
2. Shelter and Utilities		31.30			112.31
	Shelter		89.67	88.05	
	Energy Utilities		8.46	343.31	
	Water and other public services		1.87	230.60	
	PEG Total		100.00		
3. Household Furnishings and Supplies		6.06			126.43
	Household operations		22.51	63.82	
	Housekeeping supplies		17.53	137.67	
	Textiles and Area Rugs		4.16	117.63	
	Furniture		17.39	141.31	
	Major appliances		6.03	126.18	
	Small appliances, misc. hsewares		3.46	102.41	
	Misc. household equipment		28.91	163.62	
	PEG Total		100.00		
4. Apparel and services		4.00			100.89
	Men and boys		18.69	102.33	
	Women and girls		41.66	97.41	
	Children under 2		4.55	83.57	
	Footwear		17.48	98.45	
	Other apparel products and svcs		17.63	114.51	
	PEG Total		100.00		
5. Transportation		16.93			119.50
	Motor Vehicle Costs		53.67	111.91	
	Gasoline and motor oil		16.02	122.55	
	Maintenance and repairs		10.72	80.37	

APPENDIX 7—FINAL LIVING-COST RESULTS FOR THE U.S. VIRGIN ISLANDS—Continued

MEG	PEG	MEG weight (percent)	PEG weight (percent)	PEG index	MEG index
	Vehicle insurance		10.24	119.53	
	Public transportation		9.35	202.62	
	PEG Total		100.00		
6. Medical		4.44			114.17
	Health insurance		46.97	110.99	
	Medical services		32.31	121.45	
	Drugs and medical Supplies		20.72	110.03	
	PEG Total		100.00		
7. Recreation		6.23			105.18
	Fees and admissions		23.38	58.55	
	Television, radios, sound equip		12.38	103.95	
	Pets, toys, and playground equip		18.48	126.45	
	Other entertainment supplies, etc		15.57	130.73	
	Personal care products		11.10	113.14	
	Personal care services		11.29	116.88	
	Reading		7.80	117.29	
	PEG Total		100.00		
8. Education and Communication		4.09			168.47
	Education		5.06	188.50	
	Communications		79.32	179.61	
	Computers and Computer Services		15.62	105.41	
	PEG Total		100.00		
9. Miscellaneous		13.79			102.87
	Tobacco products and supplies		3.51	60.63	
	Miscellaneous		15.12	128.10	
	Personal insurance and pensions		81.37	100.00	
	PEG Total		100.00		

MEG	PEG	St. Croix Index	St. Thomas/St. John Indexes	USVI GS Wtd. Index
OVERALL U.S. VIRGIN ISLANDS 2002 SURVEY RESULTS				
GS Employment Weights		44.02%	55.98%	100.00%
1. Food		116.05	116.71	116.42
	Cereals and bakery products	129.89	128.17	128.93
	Meats, poultry, fish, and eggs	129.25	130.42	129.91
	Dairy products	155.69	159.21	157.66
	Fruits and vegetables	108.80	118.71	114.35
	Processed Foods	128.02	136.14	132.57
	Other food at home	108.01	111.80	110.13
	Nonalcoholic beverages	132.85	137.86	135.66
	Food away from home	105.82	103.26	104.39
	Alcoholic beverages	99.25	96.91	97.94
2. Shelter and Utilities		97.01	112.31	105.58
	Shelter	70.99	88.05	80.54
	Energy Utilities	343.31	343.31	343.31
	Water and other public services	230.60	230.60	230.60
3. Household Furnishings and Supplies		126.20	126.43	126.33
	Household operations	58.68	63.82	61.56
	Housekeeping supplies	138.03	137.67	137.83
	Textiles and Area Rugs	98.61	117.63	109.25
	Furniture	141.31	141.31	141.31
	Major appliances	127.13	126.18	126.60
	Small appliances, misc. hsewares	101.87	102.41	102.17
	Misc. household equipment	169.19	163.62	166.07
4. Apparel and services		102.52	100.89	101.61
	Men and boys	115.94	102.33	108.32
	Women and girls	98.51	97.41	97.89
	Children under 2	83.57	83.57	83.57
	Footwear	97.20	98.45	97.90
	Other apparel products and svcs	107.95	114.51	111.62
5. Transportation		111.02	119.50	115.76
	Motor Vehicle Costs	112.02	111.91	111.96
	Gasoline and motor oil	73.46	122.55	100.94
	Maintenance and repairs	88.94	80.37	84.14
	Vehicle insurance	119.53	119.53	119.53
	Public transportation	185.59	202.62	195.12

MEG	PEG	St. Croix Index	St. Thomas/St. John Indexes	USVI GS Wtd. Index
6. Medical		102.16	114.17	108.88
	Health insurance	110.99	110.99	110.99
	Medical services	83.05	121.45	104.55
	Drugs and medical Supplies	111.93	110.03	110.87
7. Recreation		107.72	105.18	106.30
	Fees and admissions	85.81	58.55	70.55
	Television, radios, sound equip	94.05	103.95	99.59
	Pets, toys, and playground equip	124.46	126.45	125.57
	Other entertainment supplies, etc	118.42	130.73	125.31
	Personal care products	120.92	113.14	116.56
	Personal care services	107.77	116.88	112.87
	Reading	115.28	117.29	116.41
8. Education and Communication		173.59	168.47	170.72
	Education	268.97	188.50	223.93
	Communications	180.93	179.61	180.19
	Computers and Computer Services	105.41	105.41	105.41
9. Miscellaneous		105.08	102.87	103.84
	Tobacco products and supplies	52.54	60.63	57.07
	Miscellaneous	144.64	128.10	135.38
	Personal insurance and pensions	100.00	100.00	100.00
Overall Price Index				112.44
Plus Adjustment Factor				9.00
Final Living-Cost Index				121.44

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Federal Register

Monday,
February 9, 2004

Part III

Department of Agriculture

Farm Service Agency

7 CFR Parts 761, 762, et al.

Regulatory Streamlining of the Farm Service Agency's Direct Farm Loan Programs; Proposed Rule

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 761 through 769

RIN 0560–AF60

Regulatory Streamlining of the Farm Service Agency's Direct Farm Loan Programs

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Farm Service Agency (FSA) proposes to streamline regulations governing the direct Farm Loan Programs. The proposed regulatory action will enable FSA to accomplish the following: Simplify and clarify direct loan regulations; implement the recommendations of the USDA Civil Rights Action Team; meet the objectives of the Paperwork Reduction Act of 1995; meet the goals and objectives of the National Performance Review; and separate FSA's direct Farm Loan Programs regulations from Rural Development mission area loan program regulations.

DATES: Comments on this rule and on the information collections must be submitted by April 9, 2004 to be assured consideration.

ADDRESSES: Address comments on, and alternatives to, the proposed rule to: Deputy Administrator for Farm Loan Programs, USDA/FSA/DAFLP/STOP 0520, 1400 Independence Avenue SW., Washington, DC 20250–0520. Comments on the information collection requirements of this proposed rule must be sent to the Office of Management and Budget (OMB) at the address listed in the Paperwork Reduction Act section of this preamble and sent to the Department address listed after the OMB address.

FOR FURTHER INFORMATION CONTACT: William D. Cobb USDA/FSA/DAFLP/STOP 0520, 1400 Independence Avenue SW., Washington, DC 20250–0520; telephone (202) 720–1059; electronic mail: *bill_cobb@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant under Executive Order 12866 and was reviewed by OMB.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. This rule does not impose any new requirements on Agency applicants and borrowers. In some cases, existing information collections and regulatory requirements have been reduced as a result of streamlining the loan making and servicing application processes.

Environmental Impact Statement

FSA is completing an Environmental Assessment (EA) in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508) and the FSA regulations for compliance with NEPA, 7 CFR part 799 and part 1940, subpart G. The draft EA will be made available for public comment under a separate notice. The final EA will be completed before this rule is published as final.

Executive Order 13132

The policies contained in this rule do not have a substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. In accordance with this Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR parts 11 and 780 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Executive Order 12372

For reasons contained in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs within this rule are excluded from the scope of E.O. 12372, which requires intergovernmental consultation with State and local officials.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA requires FSA to prepare a written statement, including a cost benefit assessment, for proposed and final rules with ''Federal mandates'' that may result in such expenditures for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined under Title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

Information collection requirements for the direct Farm Loan Programs are currently approved in numerous information collection dockets. Based on the proposed regulations, FSA will reduce the number of information collections by consolidating related collections in a manner that matches the organizational structure of the proposed CFR parts.

In accordance with the Paperwork Burden Act of 1995, FSA intends to request approval of the following information collections.

Title: General Program Administration.

OMB Control Number: 0560–New.

Type of Request: New Collection.

Abstract: 7 CFR 761, General Program Administration, establishes requirements within FSA's Farm Loan Programs that are applicable to both making and servicing direct loans. Information collections established by the regulation are necessary to ensure that program applicants and participants meet statutory eligibility requirements, loan funds are used for authorized purposes and the Government's interest in security is adequately protected. Specific information collection requirements include financial information in the form of a balance sheet and cash flow projection used in loan making and servicing decisions; information needed to establish joint bank accounts in which loan funds, proceeds derived from the sale of loan security or insurance proceeds may be deposited; collateral pledges from financial institutions when the balance of a supervised bank account will exceed $100,000; and documentation that

construction plans and specifications comply with state and local building standards. Existing collections applicable to FSA's Farm Loan Programs from OMB Control Numbers 0560–0154, 0575–0042, 0575–0064, and 0575–0158 will be consolidated in this docket. Burden associated with the Rural Development Agencies' information collections will remain under Control Numbers 0575–0042, 0575–0064, and 0575–0158.

Estimate of Burden: Public reporting for this collection of information is estimated to average 51 minutes per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated number of respondents: 70,290.

Estimated number of responses per respondent: 2.6.

Estimated total annual burden on respondents: 214,363.

Title: Direct Loan Making.

OMB Control Number: 0560–New.

Type of Request: New Collection.

Abstract: 7 CFR 764, Direct Loan Making, establishes the requirements for FSA's direct Farm Ownership, Operating, and Emergency loan programs. Information collections established in the regulation are necessary for the Agency to evaluate the loan applicant's request and determine if eligibility, loan repayment and security requirements can be met. Existing collections pertaining to direct loan making from OMB Control Numbers 0560–0157, 0560–0159, 0560–0162, 0560–0166, 0560–0167, 0560–0178, 0575–0087, 0575–0088, and 0575–0147 will be consolidated in this docket. Burden associated with the Rural Development Agencies' information collections will remain under Control Numbers 0575–0087, 0575–0088, and 0575–0147.

Estimate of Burden: Public reporting for this collection of information is estimated to average 26 minutes per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated number of respondents: 128,513.

Estimated number of responses per respondent: 3.38.

Estimated total annual burden on respondents: 177,150.

Title: Direct Loan Servicing—Regular.

OMB Control Number: 0560–New.

Type of Request: New Collection.

Abstract: 7 CFR 765, Direct Loan Servicing—Regular, establishes the requirements related to routine servicing actions associated with direct loans. Information collections established in the regulation are necessary for the Agency to monitor and account for loan security, including proceeds derived from the sale of security, and to process a borrower's requests for subordination or partial release of security. Information collections associated with the statutory requirement that borrowers be reviewed for graduation to commercial credit are also established in the regulation. Existing collections pertaining to routine direct loan servicing actions from OMB Control Numbers 0560–0158, 0560–0171, 0575–0075, and 0575–0093 will be consolidated in this docket. Burden associated with the Rural Development Agencies' information collections will remain under Control Numbers 0575–0075, and 0575–0093.

Estimate of Burden: Public reporting for this collection of information is estimated to average 38 minutes per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated number of respondents: 58,875.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 105,547.

Title: Direct Loan Servicing—Special.

OMB Control Number: 0560–New.

Type of Request: New Collection.

Abstract: 7 CFR 766, Direct Loan Servicing—Special, establishes the requirements for servicing financially distressed and delinquent direct loan borrowers. The information collections established in the regulation are necessary for the Agency to evaluate a borrower's request for disaster set-a-side, primary loan servicing (including reamortization, rescheduling, deferral, write down and conservation contracts), and homestead protection. Existing collections pertaining to servicing financially distressed and delinquent direct loan borrowers from OMB Control Numbers 0560–0160, 0560–0161, and 0560–0164 will be consolidated in this docket.

Estimate of Burden: Public reporting for this collection of information is estimated to average 31 minutes per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated number of respondents: 11,595.

Estimated number of responses per respondent: 2.39.

Estimated total annual burden on respondents: 14,869.

Title: Inventory Property Management.

OMB Control Number: 0560–New.

Type of Request: New Collection.

Abstract: 7 CFR 767, Inventory Property Management, establishes the requirements for the management, lease and sale of security property acquired by the Agency. Information collections established in the regulation are necessary for the Agency to determine an applicant's eligibility to lease or purchase inventory property; and to ensure payment of the lease or purchase amount. Existing collections pertaining to the lease and sale of property acquired under FSA's Farm Loan Programs from OMB Control Number 0575–0110 will be incorporated in this docket. Burden associated with the Rural Development Agencies' information collections will remain under Control Number 0575–0110.

Estimate of Burden: Public reporting for this collection of information is estimated to average 40 minutes per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated number of respondents: 212.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 243.

The Agency is soliciting comments on the burden of all of the above regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. These comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to William D. Cobb, USDA/FSA/DAFLP/STOP 0520, 1400 Independence Avenue, SW., Washington, DC 20250–0520. Copies of the information collections may be obtained from Mr. Cobb at the above address. All comments will become a matter of public record.

Federal Assistance Programs

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans

Government Paperwork Elimination Act (GPEA)

The Agency is committed to compliance with GPEA, which requires Government agencies to provide the public the option of submitting or transacting business electronically to the maximum extent possible.

Discussion of the Proposed Rule

Background

FSA proposes to move the majority of its Farm Loan Programs direct loan making and servicing rules from Chapter XVIII to Chapter VII of the Code of Federal Regulations (CFR). Prior to the Department of Agriculture Reorganization Act of 1994 (1994 Act), Chapter XVIII was assigned to the Farmers Home Administration (FmHA) and Chapter VII was assigned to the Agricultural Stabilization and Conservation Service (ASCS). Under the provisions of the 1994 Act, both FmHA and ASCS were abolished. FmHA's Farm Loan Programs and ASCS's programs were consolidated under the newly created FSA while the remaining FmHA programs were transferred to one of the following Rural Development mission area agencies: Rural Business Cooperative Service, Rural Housing Service, and Rural Utilities Service. Chapter VII of the CFR is now assigned to FSA while Chapter XVIII is shared by FSA and the Rural Development mission area agencies.

The following policies are not addressed in this proposed rule but will be addressed in separate rulemakings:

1. Designation of Disaster Areas—The designation of disaster areas will be moved from subpart A of 7 CFR 1945 to 7 CFR 791.

2. Offset of Federal payments—The policies pertaining to the offset of Federal payments for application to outstanding Farm Loan Programs debts contained in subpart C of 7 CFR 1951 will be consolidated with 7 CFR 792.

3. Environmental Policies—The environmental policies contained in subpart G of 7 CFR 1940 will be consolidated with 7 CFR 799. This proposed rule makes reference to part 799. If part 799 is not amended prior to the rule finalizing this proposed rule, the Agency will continue to use part 1940, subpart G.

4. Debt Settlement Policies—The debt settlement policies contained in subpart B of 7 CFR 1956 will be consolidated with 7 CFR 792. This proposed rule makes reference to part 792. If part 792 is not amended prior to the rule finalizing this proposed rule, the Agency will continue to use part 1956, subpart B.

Consolidation and Reorganization

The Farm Loan Programs direct loan making and servicing rules are currently in numerous parts of Chapter XVIII, making their use difficult to all but the most well-informed user. The Agency proposes to consolidate and reorganize these rules in an orderly and logical manner. Part 761 of Chapter VII is entitled General Program Administration and contains the rules that, in general, apply either to both guaranteed and direct loans, or to both direct loan making and direct loan servicing. Part 762, which contains regulations pertaining to the Guaranteed Loan Program, was published as a final rule on February 12, 1999 (64 FR 7358–7403). Part 763 is reserved for future use. Part 764 is entitled Direct Loan Making and consists of the regulations governing the origination of direct loans. Part 765, Regular Servicing, contains the regulations related to servicing for direct loans. Regulation policies for distressed and delinquent borrowers with direct loans are contained in part 766, Special Servicing. Part 767 is entitled Inventory Property Management and contains regulations pertaining to security property that is abandoned by the borrower or acquired by the Agency. Parts 768 and 769 are reserved for future use. The table shown below illustrates how the existing CFR parts will be consolidated within the proposed parts:

Proposed CFR parts	Existing CFR subparts from which FSA provisions will be consolidated
7 CFR 761—General	7 CFR 1806–A, 1806–B, 1901–A, 1901–F, 1902–A, 1924–A, 1924–B, 1940–Q.
764—Direct Loan Making	7 CFR 1910–A, 1927–B, 1941–A, 1941–B, 1943–A, 1943–B, 1945–D.
765—Direct Loan Servicing—Regular	7 CFR 1925–A, 1950–C, 1951–A, 1951–D, 1951–F, 1951–J, 1962–A, 1965–A.
766—Direct Loan Servicing—Special	7 CFR 1951–L, 1951–S, 1951–T, 1962–A.
767—Inventory Property Management	7 CFR 1955–A, 1955–B, 1955–C.

By reorganizing the loan making and servicing rules in this manner, the general public, including loan applicants and borrowers, and the Agency can more easily find needed information. In addition, this structure helps to eliminate redundancies and, thereby, avoid inconsistencies. The proposed rule references rather than repeats other parts of the chapter, thereby, making it easier to incorporate future policy changes.

Removal of Internal and Administrative Procedures

The existing regulations often describe in detail the Agency's internal and administrative procedures for implementing Farm Loan Programs. This approach not only contributes to a lengthy body of regulations, but also creates a barrier to quickly improving procedures which have no impact on loan applicants and borrowers. The Agency has to use the rulemaking process to modify procedures, thereby, adding time and expense to prepare and implement such changes. In contrast to the current regulations, the proposed rule focuses on Agency policies impacting loan applicants and borrowers. The Agency is moving the administrative procedures to a series of new handbooks which will parallel the topics in this proposed rule and will be issued simultaneously with the final rule.

Streamlining of Program Requirements

While consolidating the loan making and servicing regulation parts, the Agency also is streamlining its Farm Loan Programs policies. With the aid of working groups of both Headquarters and Field staff, the Agency is proposing policy changes consistent with the existing statutory authority. The Agency also proposes to clarify certain regulations that have multiple interpretations, amend others that have led to unintended consequences, and revise policies to reduce burdens on loan applicants and borrowers. In

addition, the proposed rule initiates action toward achieving recommendation number 56 of the USDA Civil Rights Action Team Report dated August 1997, which mandated that agencies ''streamline program regulations and application forms to make USDA programs easily accessible to all customers.'' The substantive changes are discussed in this preamble by regulation section.

Removal of Obsolete Parts

As a result of the 1994 Act, some of the CFR subparts published by FmHA continue to be used by FSA and one or more of the Rural Development mission area agencies, while others are used exclusively by FSA. When the final rule for this proposed rule is published, FSA will remove the subparts which are used only by FSA. The following subparts will be removed in the final rule: 1910–A, 1924–B, 1941–A, 1941–B, 1943–A, 1943–B, 1951–J, 1951–L, 1951–S, 1951–T, and 1965–A.

National Performance Review Objectives

Under the National Performance Review initiative, Federal agencies were charged with ''creating a government that works better and costs less.'' Federal agencies were commissioned to focus on results rather than procedures, empower employees, put customers first, and cut red tape. The proposed rule responds to this challenge by eliminating unnecessary procedural or internal requirements, clarifying regulations with multiple interpretations, and adding flexibility to allow employees to address each customer's unique needs.

Farm Security and Rural Investment Act of 2002

The proposed rule contains all the provisions from the Farm Security and Rural Investment Act of 2002 applicable to Farm Loan Programs. Those provisions were published in the proposed rule of April 9, 2003, (68 FR 17316–17320), entitled ''2002 Farm Bill Regulations—Loan Eligibility Provisions,'' and the final rule of February 18, 2003, (68 FR 7693–7701), entitled ''2002 Farm Bill Regulations—General Credit Provisions.''

Part 761—General Program Administration

Abbreviations and Definitions (Section 761.2)

The Agency proposes to move all abbreviations and definitions applicable to Farm Loan Programs to this section. By including all abbreviations and definitions in a single section of the CFR, the Agency will eliminate the need for the general public to search multiple CFR subparts and parts to determine if and where a term is defined. Other CFR parts applicable to Farm Loan Programs will refer the reader to this section for an explanation or definition of an abbreviation or term.

The Agency proposes to replace the term ''nonfarm enterprise'' with the term ''non-eligible enterprise.'' Existing direct loan making regulations identify authorized purposes for which loan funds may be used. While the Agency defines the term nonfarm enterprise, the regulations do not clearly state that loan funds may not be used to finance nonfarm enterprises, nor do they identify purposes for which loan funds may not be used. The proposed rule defines the term non-eligible enterprise and clearly states that loan funds may not be used to finance a non-eligible enterprise. In addition, the term non-farm enterprise has resulted in confusion as several of the enterprises listed in the definition are farm or agriculture related, but are simply not an authorized loan purpose. The Agency believes the term non-eligible enterprise more accurately reflects that enterprises identified in the definition may not be financed with Agency loans funds. Furthermore, the Agency proposes to modify the definition by categorizing the examples under the production of exotic or non-farm animals; production of non-farm goods or services; or processing of farm products.

The Agency also proposes to modify the definition of ''family farm.'' The definition contained in the existing regulation provides broad guidelines for determining if a farming operation is a family farm; however, this has resulted in inconsistencies in applying the definition on a nationwide basis. The proposed definition establishes that the typical year gross income of the operation cannot exceed at the greater of $750,000 in annual sales or the 95 percentile of farms in the state with sales in excess of $10,000, based on the most recently published farm data and survey of farm economic factors published by the National Agricultural Statistics Service, USDA. This calculation will be available in each Agency Office. Consideration of the typical year annual gross farm income of the particular state involved will allow for necessary regional differences in what is considered a ''family farm'' but is based on objective, quantifiable criteria. The $10,000 gross sales threshold is consistent with treatment of farms with gross sales of less than $10,000 as hobby farms by the Economic Research Service, USDA. The definition also will be clarified to state that daily operational and management decisions must be made and substantial labor must be provided by the applicant or borrower and persons related to the applicant or borrower by blood or marriage. ''Related by blood or marriage'' will be defined as connected to one another as husband, wife, parent, child, brother, or sister. The current definition of family farm refers to the applicant or borrower and ''family members'' of the applicant or borrower. The Agency anticipates that these proposed objective criteria will result in consistent, equitable, and sound loan making decisions across states.

In the existing regulations, the Agency utilizes the term ''farm or ranch.'' While this wording takes regional terminology into consideration, the Agency believes it is unnecessary. In the proposed rule, the Agency uses only the term ''farm.'' The definition of ''farm'' clearly includes ''farm'' or ''ranch'' as appropriate.

The Agency also proposes to add definitions for the following terms: basic part of an applicant's total farming operation, chattel or real estate essential to the farming operation, crop allotment or quota, debt service margin, essential family household expenses, established farmer, false information, farm income, Farm Programs payments, foreclosed, foreclosure sale, good faith, household contents, joint financing arrangement, production cycle, and working capital.

Planning and Performing Construction and Other Development (§ 761.10)

The proposed regulations would give loan applicants more responsibility and flexibility in planning and completing construction and development projects. For example, applicants would have more freedom in choosing appropriate construction and repair design standards. The existing regulations require applicants to select from design standards that have been adopted by the Agency, including methods described in the FmHA Manual of Acceptable Practices. To ensure that Agency-financed projects have architectural and engineering integrity, the revised regulations would require that the design standard ''meet or exceed any applicable local or state laws, ordinances, codes, and regulations, including building, plumbing, mechanical, electrical, water, and waste management'' (proposed section 761.10(d)(3)). Moreover, the revised rules would allow the Agency to request additional technical data, tests, or engineering evaluation, or to reject proposals that do not conform with industry-accepted construction practices and standards.

The revised regulations also would increase the applicant's responsibility and flexibility in preparing construction and development plans, while decreasing the Agency's role in this task. For example, currently the Agency must visit the development site with the applicant to identify and agree upon the necessary items of development, as well as the dates by which construction will be started and completed. Under the revised regulations, the applicant would propose the scope and schedule of the development, and the Agency would visit the site while evaluating the proposal. In addition, the Agency would no longer be required to advise the applicant of ''publications, plans, planning aids, engineering data, and other technical advice and assistance available though local, state, and Federal agencies, and private individuals and organizations'' (7 CFR 1924.5(f)(2)(v)). While the Agency would continue to be available to advise applicants, the Agency believes that most applicants, as assisted when necessary by engineers, architects, other professionals, and state and local officials, can assemble acceptable development plans. In addition, the Agency would oversee development plans through the review process.

The proposed regulations would eliminate the Agency's responsibility to verify the architectural and engineering proficiency of proposed projects. Under current regulations, the Agency reviews a construction and development plan, drawings, and specifications to determine the technical soundness of proposed developments. In addition, the Agency must offer suggestions to the applicant, when appropriate, on how the drawings and specifications might be altered and assist the applicant in revising the drawings. Under the proposal, the Agency could ensure the soundness of proposals by requiring the applicant to provide written certification by a licensed architect, professional engineer, or other specified professionals that the ''final drawings and specifications conform with the applicable development standard.'' Thus, the applicant and professionals hired by the applicant would be responsible for the technical soundness of the proposal, not the Agency. The Agency is proposing this policy change because it lacks the engineering and architectural staff and expertise necessary to adequately review the wide variety of construction and development plans financed with Agency funds. This change also will give the applicant greater control over the project schedule. While the need for a professional certification may increase project costs, these costs can be covered as part of the Agency loan for the project.

Under both the existing and proposed regulations, an applicant is responsible for seeking bids and selecting contractors. The proposed rule, however, would limit the Agency's responsibilities in this process. For example, the existing rules allow the Agency to request further negotiations between the applicant and the proposed contractor when the Agency determines that the proposed contractor's price is too high or is otherwise unreasonable. In addition, the Agency may request the applicant to obtain competitive bids if the applicant is unable to negotiate a reasonable price or if the Agency considers the contractor to be unqualified. Furthermore, under the existing rules, the applicant reviews competitive bids with the Agency's assistance and must select the lowest responsible bidder (7 CFR 1924.6(a)(10)(iv)). The Agency is proposing to eliminate its role in contractor selection to give applicants additional discretion and responsibility and will only require the applicant to provide an estimate of the total cash cost for all planned development prior to loan closing. The Agency believes that applicants generally have adequate incentives and information to select qualified and reasonably priced contractors.

The existing regulations require the Agency to inspect developments ''as frequently as necessary to assure that construction and land development conforms to the drawings and specifications'' (7 CFR 1924.9(b)). At a minimum, the Agency must make final inspections of all projects. In many cases, additional inspections are required at certain stages of construction. Agency inspections would not be mandatory under the proposed regulations. Instead, the Agency would ''inspect development work periodically, as appropriate to protect the government's security interest'' (proposed Section 761.10(f)(1)). The proposal also would make the applicant responsible for inspecting development work as necessary to protect the applicant's interest. In addition, to protect the Government and applicant's interests, the proposal would require the applicant to obtain all lien waivers before the Agency would issue final payment and would allow the Agency to require a surety bond for construction contracts.

The Agency is proposing to streamline the inspection requirements and increase the responsibility of applicants largely because the Agency staff does not have architectural and engineering expertise. Thus, the Agency cannot assure that projects conform to drawings and specifications or assure the adequacy of actual construction and development work. The Agency would increase the applicant's responsibility to obtain adequate inspections, such as those by State or local code inspectors or inspection services. These professional inspections would protect both the applicant and the Government's interests. Less Agency involvement in the inspection process may help to expedite project completion by giving the applicant more flexibility in scheduling inspections. This regulatory change may increase project costs for some applicants who obtain professional inspections, instead of relying on the Agency's inspections. However, these costs can be covered by the Agency loan for the development project.

Part 762—Guaranteed Farm Loans

The guaranteed loan regulations were published as a final rule on February 12, 1999. In this rule, changes made to part 762 are only those necessary to correct references to CFR parts or subparts that are being revised or replaced, or to remove regulatory text which will now be addressed in part 761.

Part 764—Direct Loan Making

Application Requirements (Section 764.51)

The Agency proposes to reduce the amount of historical documentation required to process loan requests. Currently, the Agency requires 5 years of financial and production documentation, while the traditional commercial lending standard is 3 years. While some additional requirements may be justified because of the additional risk inherent in a direct loan to an applicant who is unable to obtain commercial credit, the Agency does not believe the additional 2 years of data significantly improves the quality of loan making decisions; therefore, a 3-year data requirement is proposed for financial and production documentation.

The proposed rule clarifies that payment of the applicable credit report fee is required from the loan applicant for the application to be considered complete. The Agency is only responsible for obtaining the credit report after the fee has been paid. Existing regulation, published in 7 CFR 1910.4, pertaining to a complete loan application lists the credit report under the heading ''FSA Responsibilities for a

Complete Application''; however, regulations published in 7 CFR 1910.51 clearly provide that ''a non-refundable fee will be charged to the applicant'' for ordering a credit report. This has resulted in confusion in determining the loan applicant's responsibilities regarding a complete application and will be revised accordingly.

The proposed rule also would authorize the Agency to collect additional information from an applicant that the Agency deems necessary to make a decision on the applicant's request. This provision would apply to all loan applicants. The additional information might include divorce or separation decrees, documentation regarding child support payments, or any other information necessary to evaluate the loan request. Business loans, including direct farm loans, require an assessment of each applicant's request, and there are no one-size-fits-all templates. Agency staff feels constrained by the existing regulations since the regulations do not allow the Agency to identify specific information needed for each application. Rather than attempt to identify every possible piece of information that could ever be needed and then require every applicant to provide that information, thereby increasing the burden on all applicants, the Agency proposes to allow specific information to be requested as deemed necessary.

Applicant Eligibility (Section 764.101)

The proposed rule will also set consistent rules for acceptable composition of entity applicants. Under the existing rules, an entity applicant for an emergency loan must meet the same requirements as applicants for other direct loans, except that the applicant may not be an estate or trust, or a corporation, partnership, or joint operation with over 50 percent of the ownership held by an estate, trust, another corporation, another partnership, or another joint operation. The proposed rule would extend this requirement to entity applicants for all direct loans. The Agency does not foresee that this change would have any significant impact on applicants, but it would ease program implementation by applying the same requirements across all direct loan programs.

An eligibility requirement has been added to require that the applicant, and all entity members in the case of an entity applicant, not own real estate subject to a Federal judgment lien. This change is made to comply with 28 U.S.C. 3201(e). This statutory provision, in part, prohibits debtors with Federal judgment liens on their property from receiving any loan made or guaranteed by the United States or receiving funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary. The prohibition remains until the judgment is paid in full or otherwise satisfied.

General Limitations (Section 764.102)

The proposed rule will add the limitation for all Farm Loan Programs direct loans that the tracts to be farmed must be contiguous or the distance between the tracts will not prevent an efficient farming operation. This is a current loan limitation for farm ownership loans and should be applied consistently across loan programs.

The Agency also proposes to add the clarification that loan funds may not be used to establish or support a non-eligible enterprise, even if the non-eligible enterprise contributes to the farm. The term ''non-eligible enterprise'' will be substituted for the current term ''non-farm enterprise''.

The proposed rule also would specify that loan funds are to be used for farming operations located in the United States, in accordance with the Consolidated Farm and Rural Development Act (Act). Sections 302 and 311 of the Act, in part, limit farm ownership and operating loans, respectively, to farmers ''in the United States'' who are United States citizens and to farm entities ''engaged primarily and directly in farming or ranching in the United States'' whose majority interest is held by United States citizens. Section 321 of the Act similarly limits emergency loans, in part, to established farmers who are citizens of the United States and farm entities in which a majority interest is held by United States citizens where the applicants' farm operations ''have been substantially affected by a natural disaster in the United States.''

The existing regulations contain eligibility requirements that an applicant be a United States citizen, or lawfully admitted alien and for entity applicants that the operation must ''be controlled by farmers or ranchers engaged primarily and directly farming in the United States.'' The Agency will add in the proposed rule a limitation that loan funds only be used for farm operations in the United States.

Choice of Security (Section 764.103)

Sometimes an applicant has more assets available than are needed to satisfy the Agency's security requirements. The existing regulations have been construed by some to allow the applicant to choose which assets would secure the Agency's loan. The proposed rule clarifies that the Agency has the authority and responsibility to choose the best security available when there are several options. However, under the proposal, the Agency may honor an applicant's preference that certain assets be taken as security over others provided that the quality and value of the Agency's security position would not be compromised.

Agency Lien on Non-Essential Assets (Section 764.103)

Non-essential assets are those assets that are not essential to the farming operation and do not contribute net income to pay family living expenses. The Agency prefers that an applicant sell non-essential assets and reduce the amount of the loan request. However, there are circumstances when an applicant cannot or will not convert non-essential assets to cash.

Existing regulations require that the Agency take a lien on all non-essential assets with an aggregate value exceeding $5,000 as security only for emergency loans. The proposed rule would extend this requirement to all direct loans for consistency and would change the value of the non-essential assets from an ''aggregate value exceeding $5,000'' to an individual value for each non-essential asset in excess of $5,000. As under the existing regulations, the lien on non-essential assets would be taken in addition to the lien on assets obtained to meet the adequate or additional security requirements. These changes provide consistency between loan programs and ensure that the Agency does not invest an inordinate amount of time obtaining a lien on assets of minimal value.

Farm Ownership Loan Program (FO) (Subpart D)

The proposed regulations would clarify the benefits of a joint financing arrangement for FO loans. A joint financing agreement is an arrangement between two or more lenders that make separate loans simultaneously to supply the funds required by one applicant. Currently, the regulations describe the joint financing agreement but do not clearly state that a lower interest rate will apply. The proposed rule states that the joint financing agreement allows the Agency to establish a ''more favorable interest rate. This interest rate would be at least 4 percent annually.''

Operating Loan Program (OL) (Subpart F)

The OL loan eligibility requirement that the applicant and any persons signing the promissory note may not

close an OL loan in more than seven calendar years will be modified to apply only after December 31, 2002. This change is required by section 255 of the Agricultural Risk Protection Act of 2000, Pub. L. 106–224, enacted on June 20, 2000.

The Agency proposes to clarify its policy regarding the difference between the acceptable use of OL and FO funds. Prior to March 3, 1997, (62 FR 9351–9359) the authorized uses for direct OL funds included ''not more than $15,000 in a fiscal year for real estate improvements or repairs.'' The current regulation provides, in part, that OL funds may be used for paying costs associated with reorganizing a farm or ranch to improve its profitability; purchasing farm or ranch equipment; paying annual operating expenses; and paying farm, ranch or home needs. Under this language, the Agency permits OL funds to be used for real estate improvements or repairs, but the lack of specific guidelines has resulted in confusion regarding the intent of the regulation.

The proposed rule provides that OL funds can be used for minor repairs and improvements to buildings, provided the costs do not exceed $15,000 per year. More substantial repairs and improvements would have to be made under a FO loan. This policy is consistent with the statutory loan purposes of OL loans in section 312 of the Act.

The Agency proposes to remove the requirement of a nonsupervised bank account for farm or home needs (7 CFR 1941.16) for OL applicants. Prior to the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127) (1996 Act), the Act provided that the Agency ''shall reserve not more than 10 percent of any loan made under this title or $5,000 of such loan, whichever is less, to be placed in a nonsupervised bank account which may be used at the discretion of the applicant for necessary family living needs * * *.'' The 1996 Act amended section 312 of the Act to provide that the Agency ''may reserve a portion of any loan * * *.'' While the amended language maintained the maximum limit of 10 percent of the loan amount or $5,000, it provides the Agency with some flexibility in implementation. The payment of expenses for family subsistence is an authorized use of loan funds and in many cases, loan funds are provided directly to the applicant to use as specified in the operating plan agreed to by both the applicant and the Agency without the need of a nonsupervised bank account. The proposed rule only requires the use of a supervised bank account when ''special supervision is needed.'' This is consistent with the Agency's policy of reducing the use of supervised bank accounts. Therefore, the Agency has determined that it is no longer necessary to require the use of a ''nonsupervised bank account'' in its regulations.

Youth Loan Program (Subpart G)

The Agency proposes to modify the Youth Loan Program regulations in order to make the program easier to use and more accessible. The Youth Loan Program is part of the direct OL and currently has the same regulatory requirements as other OL loans. The Agency proposes to establish a separate subpart for youth loan regulations and streamline the processing of Youth loans.

The Agency makes small loans, up to a maximum of $5,000, to youths (age 10–21) who likely have no credit background, or at least, have less credit history than the typical adult applicant. The risk of loss to the Agency is low due to the small loan balance. Additionally, some of the information that is routinely required to process loans is generally not available. Therefore, under the proposed rule, the Agency may waive certain application requirements that will not be applicable based on the applicant's age. The Agency is soliciting comments on lowering the youth applicant's age limit to 8 years of age to coincide with the age limitation in participating in 4–H clubs. The Agency will evaluate all comments received on this issue and adopt the age limit suggested on most comments.

The proposed rule also would emphasize the Agency's intention that Youth loans support agriculture-related, educational projects. The existing regulations state that the objective of the Youth Loan Program is to provide credit for rural youths to establish and operate modest, income-producing projects in connection with 4–H clubs, FFA, and similar organizations. This provision has been interpreted to allow Youth loans for projects that are not significantly related to agriculture, therefore, a provision on authorized Youth loan users will be added.

The existing definition of ''rural youth'' limits the Youth Loan Program to a youth who ''does not reside in any city or town with a population of more than 10,000 inhabitants.'' As part of the Agency's effort to make the Youth Loan Program more accessible, the proposed rule would extend the program to applicants who reside in a rural area, or city or town with a population of 50,000 or fewer people. The Youth Loan Program provides a valuable, educational opportunity for youth to experience farming. By providing supervised loan funds for agriculture-related projects to a larger pool of youth, the Agency hopes to increase the number of motivated, educated farmers in the future.

The existing security requirements are the same for a Youth loan and an OL loan. Under the existing regulations, additional security up to 150 percent of the loan amount is required if it is available. In the case of a term OL loan, the existing regulations require security with a value that will remain relatively constant over time that is equal to 100 percent of the loan amount. Youth loan applicants generally do not have available security beyond what is purchased or produced with loan funds. The proposed rule would require the Youth loan be secured by only the asset being purchased or produced with the loan funds, unless it is impractical to separately identify the asset from the applicant's other assets or the adequate security requirement has not been met. This provision would eliminate the requirement for additional security in the case of youth loans.

Emergency Loan Program (EM) (Subpart H)

The Agency published a final rule to streamline the EM loan program on January 8, 2002, in 67 FR 791–801. This proposed rule adopts the changes addressed in the discussion of the January 8, 2002, rule. Therefore, while the Agency will accept comments regarding the EM loan program, discussion of the changes is not included in this rule.

Loan Decision and Closing (Subpart I)

The Agency proposes to clarify the actions to be taken when an adverse loan decision is overturned on appeal. Loan approval is not automatic after an Agency loan denial is overturned. The Agency must reevaluate the request based on the findings of the appeal hearing officer and take the next step toward processing the loan application. Current regulations do not specify the process that occurs after a loan denial is overturned. To avoid confusion, the proposed rule states that the Agency will consider the following prior to loan approval: (1) Satisfactory review of current financial information and determination of whether changes in the applicant's financial and agricultural conditions will adversely affect the applicant's operation; (2) determination that the applicant will be able to produce a crop in the production cycle for which the loan is requested (specifically for crop production loans);

and (3) determination that the applicant's operating plan, as modified based on the appeal decision, reflects a feasible plan. The Agency expects that this clarification would create a more efficient and consistent decision process for both the Agency and applicants.

The proposed rule states that the Agency will not approve a loan unless the applicant demonstrates an ability to satisfy its total credit needs. For example, an applicant for a FO loan must demonstrate an ability to obtain any additional credit necessary to operate the farm. This proposed change recognizes that the Agency's loan may be only a part of the applicant's financial needs. It would help ensure that the Agency makes loans only to applicants who have viable operations and are not undue credit risks.

Borrower Training (Subpart J)

Under the existing regulations, the Agency must evaluate the need for production and financial management training when considering a request for a loan or primary loan servicing. Additionally, the Agency cannot require applicants ''who have previously received a waiver, or who have previously satisfied the training requirements'' to complete training (7 CFR 1924.74(b)(2)). Under the proposed regulations, the Agency is eliminating the requirement to assess the need for training when a borrower requests primary loan servicing. The Agency believes that borrower training, if needed, is most helpful early in the loan process. It is of little or no benefit to a borrower who is already delinquent or in non-monetary default. The Agency, however, would be able to require direct loan applicants who have previously received a waiver or satisfied training requirements to complete training when: (1) The proposed loan is to finance a new enterprise for which the applicant has not had production training or (2) information contained in the loan assessment or obtained from year-end analyses, farm visits, or the borrower's case file indicates that additional production or financial management training is needed. This early detection of the need for additional training will help borrowers become successful and hopefully avoid later delinquencies.

Part 765— Direct Loan Servicing—Regular

Increasing Limited Resource Interest Rates (Subpart B)

Section 1951.25 of 7 CFR 1951 provides ''the interest rate may not be changed more often than quarterly.'' This limitation is eliminated in this proposed rule. The Agency instead will review borrowers with limited resource rates annually; however, the Agency may process a change in interest rate at any time it becomes aware of a change in the borrower's circumstances. This change will reduce unnecessary administrative burden and provide for annual limited resource rate reviews consistent with the annual process for developing farm operating plans.

Borrower Payments (Subpart D)

The existing regulations are written in a manner that allows inconsistencies in applying payments to the borrower's Agency loans. The proposed rule clarifies that payments will be applied in the following order:

(1) Annual operating loans;

(2) Delinquent FLP installments, paying least-secured loans first;

(3) Non-delinquent FLP installments due in the current operating cycle in order of security priority, paying least-secured loans first; and

(4) Any future FLP installments due.

The Agency believes these changes will assure that regular payments are applied to protect the Agency's security interest and preserve the financial viability of the borrower's operation.

Protective Advances (Section 765.203)

The existing regulations allow the Agency to make protective advances when necessary to protect its interest in security property. The regulations also provide that protective advances will be added to the outstanding principal when a loan is rescheduled or reamortized, except for advances to pay prior or junior liens other than real estate tax liens. This policy reduces the incentive for borrowers to pay costs such as real estate taxes. Under the proposed rule, the Agency would continue to make protective advances when necessary; however, the Agency will consider the payment of protective advances for reasons not beyond the borrower's control when determining eligibility for future loan and servicing requests. One general loan eligibility requirement is that the applicant will honestly endeavor to carry out the conditions of the loan. Another general loan servicing eligibility requirement is that the borrower has acted in good faith in accordance with borrower loan agreements.

Subordination of Chattel Security (Section 765.205)

Existing regulations published in § 1962.30 of 7 CFR 1962 allow for only one subordination to be outstanding ''at any one time in connection with the same security.'' Under the proposed rule, the Agency will consider a second subordination of chattel security to enable the borrower to obtain crop insurance when (1) the creditor with the first subordination did not provide for the payment of crop insurance and consents in writing to pay insurance premiums from crops or insurance proceeds, and (2) the borrower assigns insurance proceeds to the Agency or names the Agency in the loss payable clause of the policy. In some areas, banks typically do not lend additional money for the borrower to obtain crop insurance. In those cases, a second subordination is needed for the secured debt on an insurance provider. In addition, crop insurance may not yet be available or has not been chosen when the borrower obtains the loan requiring the first subordination of the Agency's chattel security. The proposed change would allow for second subordinations in these cases. The same requirements for initial subordinations also will apply to these second subordinations.

Unapproved Disposition of Chattel Security (Section 765.304)

A borrower cannot dispose of chattel security in a manner that is inconsistent with the borrower's agreement with the Agency. Under current regulations, when an unauthorized disposition occurs, the borrower must make restitution by paying the Agency the market value of the security, or replacing the security with property of equal or greater value. In addition, the borrower may submit information to allow the Agency to consider post-approval of the disposition, provided the funds were used in accordance with Agency regulations. However, the regulation provides that only one post-approval may be granted during the period covered by the agreement. If the borrower fails to make restitution, provide information to allow for post-approval, or commits a second transgression, the Agency may pursue civil or criminal action, or both. The proposed rule continues to allow the borrower to make restitution or submit information for post-approval; however, the requirement establishing a limit of one transgression per period of the agreement has been eliminated. The Agency believes that one warning is adequate. The proposed rule provides that subsequent violations of the agreement and uncured first violations will be considered when determining eligibility for future loan or servicing assistance. One general loan eligibility requirement is that the applicant will honestly endeavor to carry out the conditions of the loan. One general loan

servicing eligibility requirement is that the borrower has acted in good faith in accordance with borrower loan agreements.

Disposing of a Portion of Real Estate Security (Subpart H)

When the borrower proposes to sell, exchange, or otherwise dispose of a portion of real estate security, the existing regulations require that the portion of real estate security to be disposed of be appraised whenever one of several conditions are met. One of these conditions is that the estimated value of the portion of real estate security proposed for disposition exceeds $10,000. The Agency implemented this requirement to ensure that the borrower obtains fair market value for the real estate security, and that in turn, the Agency's security interest is protected. In cases where an appraisal is not required, the Agency estimates the value of the real estate based on current real estate values for the area in which the property is located. The proposed rule would increase the maximum from an estimated value of $10,000 to $25,000, but as with the existing regulations, provide the Agency discretion, when in its best interest, to obtain an appraisal when the estimated value is below this limit. The Agency proposes modifying this requirement because the cost to the Agency of conducting an appraisal for portions of properties with a value of $10,000 to $25,000 often exceeds the benefit of the appraisal. In addition, the proposed rule would require an appraisal of the remaining real estate security only when the Agency believes the value of the remaining real estate is diminished by an amount greater than the market value of the property proposed for disposition. These modifications would reduce the administrative burden associated with handling borrower requests for disposition of real estate security. It would also expedite the Agency approval process for the disposition of real estate security by borrowers. These benefits outweigh any risk to the Agency from not appraising all remaining real estate security.

In addition, the Agency proposes to modify the regulations pertaining to the use of proceeds received from the sale of real estate security. Section 1965.13(e)(4)(iii) of 7 CFR allows the borrower to use up to $10,000 to develop land not owned by the borrower. The Agency has eliminated this option as an authorized use of proceeds in the proposed rule. The Agency does not believe it is prudent to release proceeds from the sale of its loan security to develop land on which it does not have a lien.

Non-Program Loan Terms (Section 765.404)

The Agency proposes to extend the term for Non-Program loans when an ineligible applicant assumes an outstanding debt or purchases inventory property. The existing regulations allow the Agency to schedule repayment over 15 years. The Agency proposes to base the term on the applicant's repayment ability, with maximum term of 25 years. This modification will allow the Agency greater flexibility to resolve delinquent accounts through assumption of the indebtedness and when selling inventory property.

Part 766 Direct Loan Servicing—Special

Notification of the Availability of Loan Servicing (Section 766.101)

Section 331D of the Act establishes requirements regarding when the Agency must notify a borrower of the availability of loan servicing and mandates that the initial notice be ''contained in the regulations implementing this title.'' The Agency published a proposed rule (53 FR 18392–18523) announcing regulations implementing section 331D on May 23, 1988. An interim rule (53 FR 35639–35798) was published on September 14, 1988. In both rules, the Agency published the initial loan servicing notification, as well as all subsequent notices associated with the loan servicing process. The Agency chose to publish notices beyond those mandated in the Act for several reasons. First, the Agricultural Credit Act of 1987 provided for substantial changes to the Agency's loan servicing policies. Second, at the time the proposed rule was published, a significant portion of the Agency's direct loan borrowers were delinquent or in some other form of loan default. Incorporating the loan servicing notices in the regulation has resulted in the need for the Agency to go through the rulemaking process to make only minor editorial changes in the notices. Therefore, the Agency is proposing to publish only the initial loan servicing notification in its regulations as required by the Act. All other loan servicing notices will be available to the public in any Agency office.

In addition, § 1962.17(a)(2) of 7 CFR requires that a notice of the availability of loan servicing be provided to the borrower when the Agency denies a request for the release of proceeds from the sale of chattel security. This notification is not required under § 331D of the Act. Section 766.101 of the proposed rule, continues the Agency policy of notifying financially distressed and delinquent borrowers of the availability of loan servicing. Therefore, the Agency believes that the additional notification requirement established in § 1962.17 is unnecessary and has removed it.

Financial and Production Records (Section 766.102)

As with loan applicants, the Agency proposes to reduce the burden on borrowers applying for loan servicing by requiring the borrower to submit only 3 years of historical financial and production documentation when applying for loan servicing. Currently, the Agency requires the borrower to submit 5 years of historical financial and production records. The guaranteed loan program regulations require 3 years of financial and production records. To ensure consistency between programs and with industry standards, the Agency is proposing to change the requirement for the direct program to match the guaranteed program requirements, as well as commercial lenders.

Borrower Eligibility for Loan Servicing (Section 766.104)

Section 353 of the Act requires that to be eligible for loan restructuring, the delinquency must be ''due to circumstances beyond the control of the borrower, as defined in regulations issued by the Secretary.'' The Agency has published the loan servicing eligibility requirements in subpart S of 7 CFR part 1951. Section 1951.909(c)(1) lists specific causes of reductions in income ''beyond the control of the borrower.'' The Agency believes that the existing regulations do not adequately address all potential circumstances beyond the control of a borrower. Under the proposed rule, the Agency will expand the existing language which addresses ''[n]atural disasters, an outbreak of uncontrollable disease, or uncontrollable insect damage,'' to include ''adverse weather,'' thus clarifying that it is not required that the farming operation be located in a county designated or declared a natural disaster. In addition, the Agency will add reduction in income due to ''damage or destruction of property essential to the operation'' and clarify the list of examples as inexhaustive.

Agency Offer To Restructure a Delinquent Borrower (Section 766.106)

Under existing regulations, when the Agency offers to restructure the loans of a delinquent borrower, the notification

includes the right to appeal the Agency offer. If the borrower does not respond to the Agency's offer, the Agency then provides the borrower with a ''Notice of Intent to Accelerate.'' This notification also provides the borrower with appeal rights. Under this rule, the Agency proposes to consolidate the borrower's appeal rights. The Agency's offer to restructure will no longer include appeal rights. Instead, if the borrower does not accept the offer or fails to respond within the established timeframe, the Agency will immediately provide a ''Notice of Intent to Accelerate'' which will provide the borrower the opportunity to appeal either the Agency's offer, notice of intent to accelerate, or both. Consolidation of the appeal rights will allow for more timely processing of a borrower's request for loan servicing and resolution of delinquent accounts.

Deferral Period (Section 766.109)

The existing regulations stipulate that a deferral period will not exceed 5 annual installments, but are unclear on how the length of a deferral is determined. As a result, the Agency has often granted borrowers 5-year deferrals. In the proposed rule, the maximum deferral term would still be 5 years, but the Agency would grant the shortest deferral term that would result in a feasible operating plan without debt writedown. The length of the deferral period affects the interest accrual and the debt payments after deferral. A longer deferral period increases the interest accrual and the post-deferral payments. The shortest deferral period necessary to generate a feasible plan benefits the borrower by minimizing interest accrual.

Appeal of a Conservation Contract Technical Decision (Section 766.110)

Current regulations are ambiguous regarding the appeal of Natural Resources Conservation Service's technical decisions on a Conservation Contract. The proposed rule would clarify how a borrower may appeal the Natural Resources Conservation Service's technical decisions by stating that such appeals will be handled in accordance with 7 CFR part 780.

This section also will be amended to consider only the present market value of the land without any structural improvements in determining the appropriate amount of debt reduction. This change is needed to prevent inflated conservation contract values based on structural improvements that do not have value in promoting conservation, recreation, or wildlife on the property.

Softwood Timber Loan Program

The Agency proposes to eliminate the Softwood Timber Loan Program regulations. The Softwood Timber Loan Program allows a borrower to convert all or a portion of their debt to a Softwood Timber loan. This conversion allows a borrower who is financially distressed or delinquent on an Agency direct loan to defer loan payments and generate income from planting and harvesting softwood timber to make future loan payments. Since the program's inception in 1983, the Agency has processed only 35 Softwood Timber loans. The Agency believes the use of the Softwood Timber program does not justify the costs associated with maintaining the program. The most significant Agency costs associated with the Softwood Timber Loan Program include costs for training Agency staff, monitoring Softwood Timber loans, maintaining automation programs, and publishing Softwood Timber regulations. It should be noted that Softwood Timber production is confined to certain limited areas within the country as a result of the marginal land requirements. Therefore, many borrowers are not eligible for assistance under this program.

Homestead Protection eligibility (Section 766.153)

The Agency proposes to add a property eligibility requirement for homestead protection. Where voluntary conveyance of the property to the Agency would be required to process homestead protection, the Agency proposes to take title to the property only if it can obtain a positive recovery after paying any outstanding liens of other creditors on the property. This is consistent with the Agency's policy to accept voluntary conveyances only if it is in the Government's best financial interest. If homestead protection is not offered prior to foreclosure, the option is still available after the Agency takes title to the property.

Homestead Protection lease (Section 766.155)

The proposed rule will clarify that homestead protection leases will not be less than 3 years and will not exceed 5 years. These limitations on terms are required by § 352(b)(3) of the Act. The current regulation does not specify the minimum lease term.

Accelerated Repayment Agreements

The existing regulations allow the Agency to enter into an accelerated repayment agreement with a borrower when the Agency considers liquidating an account due to the borrower's failure to graduate or to use the security as agreed in the operating plan. This agreement is used in lieu of foreclosure when it is in the Agency's best financial interest and when the borrower can meet the accelerated payment schedule. The proposed rule would eliminate accelerated repayment agreements for borrowers who fail to graduate to other credit when able to do so. The Agency believes the overall impact of this change would be minimal as accelerated repayment agreements are rarely executed. Eliminating accelerated repayment agreements would allow the Agency to treat all borrowers in non-monetary default more consistently. The proposed change would encourage qualified borrowers to graduate promptly and encourage borrowers who are not farming to cure the default or voluntarily liquidate their security.

Unauthorized Assistance (Subpart F)

The Agency proposes to change its procedures regarding the resolution of unauthorized assistance cases where a portion of the loan is unauthorized. Under the current regulations, the Agency splits the loan into two accounts: one loan account for the authorized portion of the loan and a second loan account for the unauthorized portion of the loan. The Agency proposes to eliminate this requirement and by internal procedure keep one loan account to eliminate the burden on Agency staff of creating, tracking, and servicing a second loan account. Under the proposed rule, the Agency will attempt to collect the unauthorized assistance, or that portion which the borrower is able to pay within 90 days. If the borrower is unable to repay the entire amount of unauthorized assistance, the Agency may enter into an accelerated repayment plan with the borrower for such amount if the borrower did not intentionally provide incomplete or false information and such action is in the best financial interest of the Government. The debt under the accelerated repayment plan will be treated as a non-program (NP) loan with NP interest rate and terms as short as feasible, but not exceeding the remaining term of the FLP loan. The Agency will not continue with the borrower at existing rates and terms in any case as to the unauthorized portion of the debt. This change in policy is necessary to cure errors resulting in unauthorized assistance regardless of whether borrower or Agency error is involved. The unauthorized amount may be the result of a statutory or a regulatory violation, but in either case it never should have been given to the borrower. An accelerated repayment

plan will allow those borrowers who did not intentionally provide incomplete or false information to the Agency to pay unauthorized assistance over time. If the borrower is able to repay, but refuses to, the borrower will receive the primary loan servicing notices for those in non-monetary default prior to liquidation.

Part 767—Inventory Property Management

Inventory Property Classification

An interim rule published at 62 FR 44393–44404, on August 21, 1997, implemented provisions of the 1996 Act impacting the management and sale of inventory property. The revised regulation provided one method of sale of inventory property, and, thus, eliminated the need to classify inventory property as suitable or surplus. However, the interim rule did not eliminate usage of the terms ''suitable'' and ''surplus'' properties elsewhere in the CFR. The proposed rule would eliminate references to suitable and surplus property as necessary.

Chattel Inventory Property Disposition Methods (Section 767.155)

The current regulations allow the Agency to sell inventory chattel property through a sealed bid or regular sale. The proposed rule would eliminate the use of these sale methods and require sale by public auction. An auction is the most efficient and common venue for selling chattel property.

The current regulations state that ''[b]eginning farmers or ranchers obtaining special OL [Operating] loan assistance * * * will receive priority in the purchase of farm equipment held in government inventory during the commitment period'' (7 CFR 1955.122(a)). The proposed rule eliminates this preference as the Agency's statutory authority for giving special Operating loan assistance was eliminated by § 616 of the 1996 Act. This change would have a minimal impact on the Agency, beginning farmers, and the general public because of the limited amount of chattels the Agency takes into inventory.

Inventory Property With Important Resources, Special Hazard Areas, and Environmental Risks (Subpart E)

The proposed rule would clarify the Agency's obligations under the National Environmental Policy Act and other Federal environmental laws. The current regulations require the Agency to inspect all inventory property for hazardous waste contamination and report certain underground storage tanks, but they do not specify when the Agency will undertake corrective measures. The proposed rule would clarify when the Agency is responsible for cleaning up hazardous waste contamination and removing or permanently closing underground storage tanks. It would clarify that the Agency would undertake corrective measures when: (1) Any known contamination or underground storage tank leakage presents an immediate threat to the health and safety of neighboring property owners or to potential purchasers of the property; and (2) The Agency is selling the property to a beginning farmer and providing credit assistance through a direct or guaranteed loan. Moreover, the proposed rule also states that the Agency would not undertake corrective action if the property is being sold back to a potentially responsible party. By more clearly defining the Agency's responsibilities, the proposed rule would eliminate questions of liability and reduce the Agency's risk of being responsible for costly cleanups.

List of Subjects

7 CFR Part 761

Administrative practice and procedure, Agriculture, Authority delegations, Credit, Loan programs—Agriculture.

7 CFR Part 762

Agriculture, Credit, Loan programs—Agriculture.

7 CFR Part 764

Agriculture, Agricultural commodities, Credit, Disaster assistance, livestock, Loan programs—Agriculture, Mortgages.

7 CFR Part 765

Agriculture, Agricultural Commodities, Credit, Livestock, Loan programs—Agriculture.

7 CFR Part 766

Agriculture, Agricultural commodities, Credit, Livestock, Loan programs—Agriculture.

7 CFR Part 767

Agriculture, Credit, Government property, Government property management, Indians—Loans, Loan Programs—Agriculture.

Accordingly, it is proposed that 7 CFR chapter VII be amended as follows:

7 CFR Chapter VII

1. Revise part 761 to read as follows:

PART 761—GENERAL PROGRAM ADMINISTRATION

Subpart A—General Provisions

Sec.
761.1 Introduction.
761.2 Abbreviations and definitions.
761.3 Civil rights.
761.4 Conflict of interest.
761.5 Restrictions on lobbying.
761.6 Appeals.
761.7 Appraisals.
761.8 Loan limitations.
761.9 Interest rates for direct loans.
761.10 Planning and performing construction and other development.
761.11–761.50 [Reserved]

Subpart B—Supervised Bank Accounts

761.51 Establishing a supervised bank account.
761.52 Deposits into a supervised bank account.
761.53 Interest bearing accounts.
761.54 Withdrawals from a supervised bank account.
761.55 Closing a supervised bank account.
761.56–761.100 [Reserved]

Subpart C—Supervised Credit

761.101 Applicability of this subpart.
761.102 Borrower recordkeeping, reporting, and supervision.
761.103 Farm assessment.
761.104 Year-end analysis.
761.105–761.200 [Reserved]

Subpart D—Allocation of Farm Loan Programs Funds to State Offices

761.201 Purpose.
761.202 Timing of the allocation of Farm Ownership and Operating loan funds.
761.203 National reserves for Farm Ownership and Operating loans.
761.204 Methods of allocating funds to State Offices.
761.205 Computing the formula allocation.
761.206 Pooling of unobligated funds that have been allocated to State Offices.
761.207 Distribution of Farm Ownership and Operating loan funds by State Offices.
761.208 Target participation rates for socially disadvantaged groups.
761.209 Reservation of Farm Ownership and Operating loan funds for beginning farmers.
761.210 Transfer of funds.
761.211–761.250 [Reserved]

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A—General Provisions

§ 761.1 Introduction.

(a) Parts 761 through 767 describe the Agency's policies for its Farm Loan Programs. The objective of these programs is to provide supervised credit and management assistance to eligible farmers to become owners or operators, or both, of family-sized farms, to continue such operations when credit is not available elsewhere, or to return to normal farming operations after

sustaining substantial losses as a result of a designated or declared disaster. These regulations apply to loan applicants, borrowers, lenders, holders, Agency personnel, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans.

(b) This part describes the Agency's general and administrative policies for its guaranteed and direct Farm Loan Programs. In general, this part addresses issues that affect both guaranteed and direct loan programs, or both direct loan making and direct loan servicing.

§ 761.2 Abbreviations and definitions.

The following abbreviations and definitions are applicable to the Farm Loan Programs policies addressed in parts 761 through 767 unless otherwise noted.

(a) *Abbreviations.*

ALP Approved Lender Program
CLP Certified Lender Program
DSA Disaster Set-Aside
EE Economic Emergency loan
EM Emergency loan
FLP Farm Loan Programs of the FSA
FO Farm Ownership loan
FSA Farm Service Agency, an Agency of the USDA, including its personnel and any successor Agency.
Lo-Doc Low-Documentation Operating loan
OGC Office of the General Counsel of the USDA
OL Operating loan
PLP Preferred Lender Program
RHF Rural Housing loan for farm service buildings
RL Recreation loan
SAA Shared Appreciation Agreement
SA Shared Appreciation loan
SEL Standard Eligible Lender
ST Softwood Timber loan
SW Soil and Water loan
USDA United States Department of Agriculture
USPAP Uniform Standards of Professional Appraisal Practice.

(b) *Definitions.*

Abandoned security property is security property that a borrower is not occupying, is not in possession of, or has relinquished control of and has not made arrangements for its care or sale.

Accrued deferred interest is unpaid interest from past due installments posted to a borrower's loan account.

Act is the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*).

Active borrower is a borrower who has an outstanding account in the Agency records, which may include an unsatisfied account balance where a voluntary conveyance was accepted without the borrower being released from liability or where liquidation did not satisfy the indebtedness.

Additional security is property which provides security in excess of the amount of security value equal to the loan amount.

Adequate security is property which is required to provide security value at least equal to the loan amount.

Adjustment is a form of settlement that reduces the financial obligation to the Agency, conditioned upon the completion of payment of a specified amount at a future time. An adjustment is not a final settlement until all payments have been made under the agreement.

Administrative appraisal review is a review of an appraisal to determine if the appraisal:

(1) Meets applicable Agency requirements; and

(2) Is accurate outside the requirements of standard 3 of USPAP.

Agency is the FSA.

Agreement for the use of proceeds is an agreement between the borrower and the Agency that reflects how, when, and to whom the borrower will sell, exchange, or consume chattel security and the planned use of any proceeds during a specific production cycle.

Agricultural commodity is livestock, livestock products, grains, cotton, oilseeds, dry beans, tobacco, peanuts, sugar beets, sugar cane, fruit, vegetable, forage, tree farming, nursery crops, nuts, aquacultural species, and other plant and animal production, as determined by the Agency.

Allonge is an attachment or an addendum to a promissory note.

Allowable costs are those costs for replacement or repair that are supported by acceptable documentation, including but not limited to written estimates, invoices, and bills.

Applicant, as used in part 762 of this title, is the lender requesting the guarantee. Applicant as used in parts 764 through 767 is the individual or entity applying for a direct loan or direct loan servicing. Applicant as used in subpart H of part 764 is the individual or entity (including each member of the entity unless the context states that it does not apply to each member of the entity) operating the farm at the time of the disaster, who is requesting assistance from the Agency. All requirements of individual applicants apply to all members of the entity individually and collectively unless the context clearly requires otherwise.

Approval official is a field official who has been delegated approval authorities within applicable loan programs.

Aquaculture is the husbandry of any aquatic organisms (including fish, mollusks, crustaceans or other invertebrates, amphibians, reptiles, or aquatic plants) raised in a controlled or selected environment of which the applicant has exclusive rights to use.

Assignment of guaranteed portion is a process by which the lender transfers the right to receive payments or income on a guaranteed loan to another party, usually in return for payment in the amount of the loan's guaranteed principal. The lender retains the unguaranteed portion in its portfolio and receives a fee from the purchaser or assignee to service the loan and receive and remit payments according to a written assignment agreement. This assignment can be reassigned or sold multiple times.

Assignment of indemnity is the transfer of rights to compensation under an insurance contract.

Assistance is financial assistance in the form of a direct or guaranteed loan or interest subsidy or servicing action.

Assumption is the act of agreeing to be legally responsible for another party's indebtedness.

Average farm customer is a conventional farm borrower who is required to pledge crops, livestock, and other chattel and real estate security for the loan. This term does not include a high-risk farmer with limited security and management ability who is generally charged a higher interest rate by conventional agricultural lenders. Also, this term does not include a low-risk farm customer who obtains financing on a secured or unsecured basis, who is able to pledge as collateral for a loan items such as savings accounts, time deposits, certificates of deposit, stocks and bonds, and life insurance.

Basic part of an applicant's total farming operation is any single agricultural commodity or livestock production enterprise of an applicant's farming operation which normally generates sufficient income to be considered essential to the success of such farming operation.

Basic security is all farm machinery, equipment, vehicles, foundation and breeding livestock herds and flocks, including replacements, and real estate that serves as security for a loan made or guaranteed by the Agency.

Beginning farmer is an individual or entity who:

(1) Meets the loan eligibility requirements for a direct or guaranteed OL or FO loan as applicable;

(2) For OL's, has not operated a farm for more than 10 years. For FO's, including Beginning Farmer Downpayment loans, has operated a farm for more than three years, but not more than 10 years. These requirements apply to all members of an entity;

(3) Will materially and substantially participate in the operation of the farm:

(i) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm, consistent with the practices in the county or State where the farm is located.

(ii) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm. Material and substantial participation requires that the member provide some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm would be seriously impaired;

(4) Agrees to participate in any loan assessment and borrower training required by Agency regulations;

(5) Except for a direct OL applicant, does not own real farm property or who, directly or through interests in family farm entities owns real farm property, the aggregate acreage of which does not exceed 30 percent of the average farm acreage of the farms in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm acreage will be determined from the most recent Census of Agriculture;

(6) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming on a viable scale; and

(7) In the case of an entity:

(i) All the members are related by blood or marriage; and

(ii) All the members are beginning farmers.

Beginning Farmer Downpayment loan is a type of FO loan made to eligible applicants to finance a portion of a real estate purchase under part 764, subpart E of this chapter.

Borrower (or debtor) is an individual or entity that has an outstanding obligation to the Agency under any FLP loan, without regard to whether the loan has been accelerated. A borrower includes all parties liable for such obligation owed to the Agency, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed, sold, or conveyed, or who have been discharged of all such obligations owed to the Agency.

Cancellation is the final discharge or, and release of liability for, a financial obligation to the Agency on which no settlement amount has been paid.

Cash flow budget is a projection listing of all anticipated cash inflows (including all farm income, nonfarm income and all loan advances) and all cash outflows (including all farm and nonfarm debt service and other expenses) to be incurred by the borrower during the period of the budget. Cash flow budgets for guaranteed loans under $125,000 do not require income and expenses itemized by categories. A cash flow budget may be completed either for a 12-month period, a typical production cycle, or the life of the loan, as appropriate. It may also be prepared with a breakdown of cash inflows and outflows for each month of the review period and include the expected outstanding operating credit balance for the end of each month. The latter type is referred to as a ''monthly cash flow budget.''

Chattel or real estate essential to the farming operation is chattel or real estate that would be necessary for the applicant to continue operating the farm after the disaster in a manner similar to the manner in which the farm was operated immediately prior to the disaster, as determined by the Agency.

Chattel security is property that may consist of, but is not limited to: crops; livestock; aquacultural species; farm equipment; inventory; accounts; contract rights; general intangibles; and supplies that are covered by financing statements and security agreements, chattel mortgages, and other security instruments.

Civil action is a court proceeding to protect the Agency's financial interests. A civil action does not include bankruptcy and similar proceedings to impound and distribute the bankrupt's assets to creditors and probate or similar proceedings to settle and distribute estates of incompetents or of decedents under a will, or otherwise, and pay claims of creditors.

Closing agent is the attorney or title insurance company selected by the applicant and approved by the Agency to provide closing services for the proposed loan or servicing action. Unless a title insurance company provides loan closing services, the term ''title company'' does not include ''title insurance company.''

Coastal Barrier Resources Area is an area of land identified as part of the national Coastal Barrier Resources System under the Coastal Barrier Resources Act of 1980.

Commercial classified account is an Agency account of such quality that commercial lenders would likely view the loan as a profitable investment.

Compromise is the settlement of an Agency debt or claim by a lump-sum payment of less than the total amount owed in satisfaction of the debt or claim.

Conditional commitment is the Agency's commitment to a lender that the material the lender has submitted is approved subject to the completion of all listed conditions and requirements.

Conservation Contract is a contract under which a borrower agrees to set aside land for conservation, recreation or wildlife purposes in exchange for reduction of a portion of an outstanding Agency debt.

Conservation Contract review team is comprised by the appropriate offices of FSA, the Natural Resources Conservation Service, U.S. Fish and Wildlife Service, State Fish and Wildlife Agencies, Conservation Districts, National Park Service, Forest Service, State Historic Preservation Officer, State Conservation Agencies, State Environmental Protection Agency, State Natural Resource Agencies, adjacent public landowner, and any other entity that may have an interest and qualifies to be a management authority for a proposed conservation contract.

Consolidation is the process of combining the outstanding principal and interest balance of two or more loans of the same type made for operating purposes.

Construction is work such as erecting, repairing, remodeling, relocating, adding to, or salvaging any building or structure, and the installing, repairing, or adding to heating and electrical systems, water systems, sewage disposal systems, walks, steps, and driveways.

Controlled is when a director or an employee has more than a 50 percent ownership in an entity or, the director or employee, together with relatives of the director or employee, have more than a 50 percent ownership.

Cooperative is an entity that has farming as its purpose, whose members have agreed to share the profits of the farming enterprise, and is recognized as a farm cooperative by the laws of the

state in which the entity will operate a farm.

Corporation is a private domestic corporation created and organized under the laws of the state in which it will operate a farm.

Cosigner is a party who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the terms of the note. In the case of an entity applicant, the cosigner cannot be a member, partner, joint operator, or stockholder of the entity.

County is a local administrative subdivision of a State or similar political subdivision of the United States.

County average yield is the historical average yield for an agricultural commodity in a particular political subdivision, as determined or published by a government entity or other recognized source.

Criminal action is the prosecution by the United States to exact punishment in the form of fines or imprisonment for alleged violation of criminal statutes.

Crop allotment or quota is a farm's share of an approved national tobacco or peanut allotment or quota.

Current market value buyout is the termination of a borrower's loan obligations to the Agency in exchange for payment of the current appraised value of the borrower's security property and nonessential assets, less any prior liens and liquidation costs.

Debt forgiveness is a reduction or termination of a debt under the Act in a manner that results in a loss to the Agency (excluding a consolidation, rescheduling, reamortization, or deferral), through:

(1) Writing down or writing off a debt pursuant to 7 U.S.C. 2001;

(2) Compromising, adjusting, reducing, or charging off a debt or claim pursuant to 7 U.S.C. 1981; or

(3) Paying a loss pursuant to 7 U.S.C. 2005 on a FLP loan guaranteed by the Agency.

Debt reduction through a conservation easement or contract is not considered debt forgiveness for loan making or servicing purposes.

Debt instrument is a collective term that includes, but is not limited to, promissory notes and assumption agreements.

Debt settlement is a compromise, adjustment, or cancellation of an Agency debt.

Debt service margin is the difference between all of the borrower's expected expenditures in a planning period (including farm operating expenses, capital expenses, essential family living expenses, and debt payments) and the borrower's projected funds available to pay all expenses and payments.

Debt writedown is the reduction in the amount of the borrower's debt to that amount that the Agency determines to be collectible based on an analysis of the security value and the borrower's ability to pay.

Default is the failure of a borrower to observe any agreement with the Agency, or the lender in the case of a guaranteed loan, as contained in promissory notes, security instruments, and similar or related instruments.

Deferral is a postponement of the payment of interest or principal, or both.

Delinquent borrower is a borrower with any portion of a payment to the Agency that is at least 30 days past due.

Direct loan is a loan funded and serviced by the Agency as the lender.

Disaster is an event of unusual and adverse weather conditions or other natural phenomena, or quarantine, that has substantially affected producers of agricultural commodities by causing physical property or production losses in a county, or similar political subdivision, that triggered the inclusion of such county or political subdivision in the disaster area as designated by the Agency.

Disaster area is the county or counties declared or designated as a disaster area for EM loan assistance as a result of disaster related losses. This area includes counties contiguous to those counties declared or designated as disaster areas.

Disaster set-aside is the deferral of payment of an annual loan installment to the Agency to the end of the loan term in accordance with part 766, subpart B of this chapter.

Disaster yield is the per-acre yield of an agricultural commodity for the farming operation during the production period when the disaster occurred.

Economic Emergency loan is a loan that was made or guaranteed to an eligible applicant to allow for continuation of the operation during an economic emergency which was caused by a lack of agricultural credit or an unfavorable relationship between production costs and prices received for agricultural commodities. EE loans are not currently funded, however, such outstanding loans are serviced by the Agency or the lender in the case of a guaranteed EE loan.

Emergency loan is a loan made to eligible applicants who have incurred substantial financial losses from a disaster.

Entity is a corporation, partnership, joint operation, cooperative, limited liability company or trust.

Essential family household expenses are the expenses associated with providing food, clothing, and shelter necessary to maintain the borrower and the immediate family of the borrower.

Essential family living and farm operating expenses:

(1) Essential expenses are those which are basic, crucial or indispensable.

(2) In determining what are essential family living and farm operating expenses for a particular family and farm, the Agency will consider the following:

(i) The individual borrower's operation;

(ii) What is typical for that type of operation in the area; and

(iii) What is an efficient method of production considering the borrower's resources.

(3) Essential family living and farm operating expenses include, but are not limited to essential: household operating expenses; food, including lunches; clothing and personal care; health and medical expenses, including medical insurance; house repair and sanitation; school and church expenses; transportation; hired labor; machinery repair; farm building and fence repair; interest on loans and credit or purchase agreement; rent on equipment, land, and buildings; feed for animals; seed, fertilizer, pesticides, herbicides, spray materials and other necessary farm supplies; livestock expenses, including medical supplies, artificial insemination, and veterinarian bills; machinery hire; fuel and oil; personal property taxes; real estate taxes; water charges; personal, property and crop insurance; auto and truck operating expenses; and utility payments.

Established farmer is a farmer who is the operator of the farming operation (in the case of a farming operation operated by an entity, its members as a group) who:

(1) Actively participated in the operation and the management, including but not limited to, exercising control over, making decisions regarding, and establishing the direction of, the farming operation at the time of the disaster;

(2) Spends a substantial portion of time in carrying out the farming operation;

(3) Planted the crop, or purchased or produced the livestock on the farming operation;

(4) In the case of an entity, is primarily engaged in farming and has over 50 percent of its gross income from all sources from its farming operation based on the farming operation's projected cash flow for the next crop

year or the next 12-month period, as mutually determined; and

(5) Is not:

(i) An entity with an ownership interest of 50 percent or more held by one or more entities; or

(ii) An integrated livestock, poultry, or fish processor who operates primarily and directly as a commercial business through contracts or business arrangements with farmers, except a grower under contract with an integrator or processor may be considered an established farmer, provided the operation is not managed by an outside full-time manager or management service and such loans shall be based on the applicant's share of the agricultural production as set forth in the contract;

(iii) An operation which employees a full time farm manager.

False information is information provided by an applicant, borrower or other source to the Agency that the applicant or borrower knows to be incorrect.

Family farm is a farm that:

(1) Produces agricultural commodities for sale in sufficient quantities so that it is recognized as a farm rather than a rural residence, and in a typical year generates net cash income that improves the family's standard of living;

(2) Generates or will generate in a typical year annual gross farm income which does not exceed the greater of $750,000 or 95 percent of the statistical distribution of the income of farms in the State with gross sales in excess of $10,000 based on the farm data and survey of farm economic factors most recently published by the National Agricultural Statistics Service, USDA, or any successor agency;

(3) Has both physical labor and management provided as follows:

(i) The majority of day-to-day, operational decisions, and all strategic management decisions are made by:

(A) The borrower and persons related to the borrower by blood or marriage, for an individual borrower; or

(B) The members responsible for operating the farm, in the case of an entity.

(ii) A substantial amount of labor to operate the farm is provided by:

(A) The borrower and persons related to the borrower by blood or marriage, for an individual borrower; or

(B) The members responsible for operating the farm, in the case of an entity.

(4) May use full-time hired labor in amounts only to supplement family labor.

(5) May use reasonable amounts of temporary labor for seasonal peak workload periods or intermittently for labor intensive activities.

Family living expenses are the costs of providing for the needs of family members.

Family members are the immediate members of the family residing in the same household with the individual borrower, or, in the case of an entity, with the operator.

Farm is a tract or tracts of land, improvements, and other appurtenances that are used or will be used in the production of crops, livestock, or aquaculture products for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term ''farm'' also includes the term ''ranch.'' It may also include land and improvements and facilities used in a non-eligible enterprise or the residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

Farm income is the proceeds from the sale of agricultural commodities that are normally sold annually during the regular course of business, such as crops, feeder livestock, and other farm products.

Farm Loan Programs are Agency programs to make, guarantee, and service loans to family farmers authorized under the Act or Agency regulations.

Farm Ownership loan is a loan made to eligible applicants to purchase, enlarge, or make capital improvements to family farms, or to promote soil and water conservation and protection. It also includes the Beginning Farmer Downpayment loan.

Farm Programs payments are benefits received under FSA for any commodity, disaster, or cost share programs.

Farmer is an individual, corporation, partnership, joint operation, cooperative, trust, or limited liability company who is engaged in farming.

Feasible plan is when an applicant or borrower's cash flow budget indicates that there is sufficient cash inflow to pay all cash outflow each year during the term of the loan. If a loan approval or restructuring action exceeds one production cycle and the planned cash flow budget is atypical due to cash or inventory on hand, new enterprises, carryover debt, atypical planned purchases, important operating changes, or other reasons, a cash flow budget must be prepared that reflects a typical cycle. If the request is for only one cycle, a feasible plan for only one cycle is required for approval.

Financially distressed borrower is a borrower unable to make payments as planned for the current or next business accounting period or to project a feasible plan of operation for the next business accounting period.

Financially viable operation is an operation that, with Agency assistance, is projected to improve its financial condition over a period of time to the point that the operator can obtain commercial credit without further Agency assistance. Such an operation must generate sufficient income to:

(1) Meet annual operating expenses and debt payments as they become due;

(2) Meet basic family living expenses to the extent they are not met by dependable non-farm income;

(3) Provide for replacement of capital items; and

(4) Provide for long-term financial growth.

Fixture is an item of personal property attached to real estate in such a way that it cannot be removed without defacing or dismantling the structure, or damaging the item itself.

Floodplains are lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year. The base floodplain shall be used to designate the 100-year floodplain (one percent chance floodplain). The critical floodplain is defined as the 500-year floodplain (0.2 percent chance floodplain).

Foreclosed is the completed act of selling security either under the power of sale in the security instrument or through court proceedings.

Foreclosure sale is the act of selling security either under the power of sale in the security instrument or through court proceedings.

Good faith is the borrower's adherence to all written agreements with the Agency including, but not limited to, loan application, loan agreement, security instruments, operating plans, and agreements for use of proceeds. The Agency considers a borrower to act in good faith, however, when the borrower is unable to adhere to all agreements due to circumstances beyond the borrower's control. Good faith does not include fraud, waste, or conversion.

Graduation is the payment in full of all direct FLP loans made for operating, real estate, or both purposes by refinancing with other credit sources either with or without an Agency guarantee.

Guaranteed loan is a loan made and serviced by a lender for which the Agency has entered into a Lender's Agreement and for which the Agency has issued a Loan Guarantee. This term

also includes guaranteed lines of credit except where otherwise indicated.

Hazard insurance is insurance covering fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, builder's risk, public liability, property damage, flood or mudslide, workers compensation, or any similar insurance that is available and needed to protect the Agency security or that is required by law.

Holder is a person or organization other than the lender that holds all or a part of the guaranteed portion of an Agency guaranteed loan but has no servicing responsibilities. When the lender assigns a part of the guaranteed loan by executing an assignment form, the assignee becomes a holder.

Homestead protection is the borrower's right to lease with an option to purchase the principal residence and up to 10 acres of adjoining land which secured an FLP loan.

Homestead protection property is the principal residence that secured an FLP loan and is subject to homestead protection.

Household contents are essential household items necessary to maintain viable living quarters. Household contents exclude all luxury items such as jewelry, furs, antiques, paintings, etc.

Inaccurate information is incorrect information provided by a borrower or other source inadvertently without intent to obtain benefits fraudulently.

Indian reservation is all land located within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a Federally recognized Indian Tribe in the State of Oklahoma; or all Indian allotments the Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a Federally recognized Indian Tribe.

In-house expenses are expenses associated with credit management and loan servicing by the lender and the lender's contractor. In-house expenses include, but are not limited to, employee salaries, staff lawyers, travel, supplies, and overhead.

Interest Assistance Agreement is the signed agreement between the Agency and the lender containing the terms and conditions under which the Agency will make interest assistance payments to the lender on behalf of the guaranteed loan borrower.

Interest assistance anniversary date is the date on which interest assistance reviews and claims will be effective. This date is established by the lender. Once established, it will not change unless the loan is restructured.

Interest assistance review is the yearly review process that includes an analysis of the borrower's farming operation and need for continued interest assistance, completion of the needs test, and a request for continuation of interest assistance.

Inventory property is real estate and chattel property and related rights to which the Federal Government has acquired title.

Joint financing arrangement is an arrangement in which two or more lenders make separate loans simultaneously to supply the funds required by one applicant.

Joint operation is an operation run by individuals who have agreed to operate a farm or farms together as an entity, sharing equally or unequally land, labor, equipment, expenses, or income, or some combination of these items. The real and personal property is owned separately or jointly by the individuals.

Leasehold is a right to use farm property for a specific period of time under conditions provided for in a lease agreement.

Lender is the organization making and servicing a loan, or advancing and servicing a line of credit, that is guaranteed by the Agency. The lender is also the party requesting a guarantee.

Lender's Agreement is the appropriate Agency form executed by the Agency and the lender setting forth their loan responsibilities when the Loan Guarantee is issued.

Lien is a legally enforceable hold or claim on the property of another obtained as security for the repayment of indebtedness or an encumbrance on property to enforce payment of an obligation.

Limited resource interest rate is an interest rate below the Agency's regular interest rate available to farmers who are unable to develop a feasible plan at regular rates and are requesting:

(1) FO or OL loan assistance under part 764 of this title; or

(2) Primary loan servicing on an FO, OL, or SW loan under part 766 of this title.

Line of Credit Agreement is a contract between the borrower and the lender that contains certain lender and borrower conditions, limitations, and responsibilities for credit extension and acceptance where loan principal balance may fluctuate throughout the term of the contract.

Liquidation is the act of selling all security for recovery of amounts owed to the Agency.

Liquidation expenses are the costs of an appraisal, due diligence evaluation, environmental assessment, outside attorney fees, and other costs incurred as a direct result of liquidating the security for a direct or guaranteed loan. Liquidation expenses do not include internal Agency expenses for a direct loan or in-house expenses for a guaranteed loan.

Livestock is a member of the animal kingdom, or product thereof, as determined by the Agency.

Loan Agreement is a contract between the borrower and the lender that contains certain lender and borrower agreements, conditions, limitations, and responsibilities for credit extension and acceptance.

Loan applicant is the party applying to a lender for a guaranteed loan or to the Agency for a direct loan.

Loan servicing programs include primary loan servicing programs, conservation contract, current market value buyout, and homestead protection.

Loan transaction is any loan approval or servicing action.

Loss claim is a request made to the Agency by a lender to receive a reimbursement based on a percentage of the lender's loss on a loan covered by an Agency guarantee.

Loss rate is the net amount of loan loss claims paid on guaranteed OL, FO, and SW loans made in the past seven years divided by the total loan amount of all such loans made in the past seven years.

Low-Documentation Operating loan is an OL loan made to eligible applicants based on reduced documentation.

Majority interest is more than a 50 percent interest in an entity held by an individual or group of individuals.

Market value is the amount that an informed and willing buyer would pay an informed and willing, but not forced, seller in a completely voluntary sale.

Mineral right is an ownership interest in minerals in land, with or without ownership of the surface of the land.

Mortgage is a legal instrument giving the lender a security interest or lien on real or personal property of any kind. The term ''mortgage'' also includes the terms ''deed of trust'' and ''security agreement.''

Natural disaster is unusual and adverse weather conditions or natural phenomena that has substantially affected farmers by causing severe physical or production, or both, losses.

Negligent servicing is servicing that fails to include those actions that are considered normal industry standards of loan management or comply with the lender's agreement or the guarantee.

Negligent servicing includes failure to act or failure to act in a timely manner consistent with actions of a reasonable lender in loan making, servicing, and collection.

Negotiated sale is a sale in which there is a bargaining of price or terms, or both.

Net recovery value of security property is the market value of the security property, assuming that the lender in the case of a guaranteed loan, or the Agency in the case of a direct loan, will acquire the property and sell it for its highest and best use, less the lender's or the Agency's costs of property acquisition, retention, maintenance, and liquidation. The net recovery value of non-essential assets is the appraised market value of the assets less any prior liens and any selling costs which may include such items as taxes due, commissions and advertising costs. However, no deduction is made for maintenance of the property while in inventory.

Non-capitalized interest is interest on a loan that was not reclassified as principal at the time of restructuring. Between October 10, 1988, and November 27, 1990, the Agency did not capitalize interest that was less than 90 days past due when restructuring a direct loan.

Non-eligible enterprise is a business that meets the criteria in any one of the following categories:

(1) Production of exotic or non-farm animals. An enterprise which produces animals, birds, or aquatic organisms or their products which are not ordinarily associated with human consumption, fiber, or draft use, or for which a ready market does not exist.

(2) Production or marketing of non-farm goods or services. An enterprise which might be agriculturally related but does not produce or market products from the farm.

(3) Processing or marketing of farm products when the majority of the commodities processed or marketed are not produced by the farm operation.

Non-essential assets are assets in which the borrower has an ownership interest, that:

(1) Do not contribute to:

(i) Income to pay essential family living expenses, or

(ii) The farming operation; and

(2) Are not exempt from judgment creditors or in a bankruptcy action.

Non-program loan is a loan made to a borrower who does not meet the eligibility requirements for a program loan.

Normal income security is all security not considered basic security, including crops, livestock, poultry products, other property covered by Agency liens that is sold in conjunction with the operation of a farm or other business, and Farm Program payments.

Normal production yield as used in 7 CFR 764 for EM loans, is:

(1) The per acre actual production history of the crops produced by the farming operation used to determine Federal Crop Insurance payments or payment under the Non-Insured Assistance Program for the production year during which the disaster occurred;

(2) The applicant's own production records or the records of production on which FSA farm program payments are made contained in the applicant's farm program file for the previous three years, when the actual production history is not available;

(3) The county average production yield, when the production records outlined in (1) and (2) above are not available.

Note is written evidence of indebtedness, such as a promissory note, bond, or assumption agreement.

Operating loan is a loan made to an eligible applicant to assist with the financial costs of operating a farm.

Owner-operator is the individual or entity that owns the land on which a farm is located and provides the labor, management, and capital to operate the farm. An entity may have to receive authorization from the State in which the farm is located to be the owner-operator of the farm.

Partnership is any entity consisting of two or more individuals who have agreed to operate a farm as one business unit. The entity must be recognized as a partnership by the laws of the State in which the partnership will operate a farm. It also must be authorized to own both real and personal property and to incur debt in its own name.

Physical loss is verifiable damage or destruction with respect to real estate or chattel, excluding annual growing crops.

Potential liquidation value is the amount of a lender's protective bid at a foreclosure sale. Potential liquidation value is determined by an independent appraiser using comparables from other forced liquidation sales.

Present value is the present worth of a future stream of payments discounted to the current date.

Presidentially-designated emergency is a major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

Primary loan servicing programs include:

(1) Loan consolidation and rescheduling, or reamortization;

(2) Interest rate reduction, including use of the limited resource rate program;

(3) Deferral;

(4) Write-down of the principal or accumulated interest; or

(5) Any combination of the above.

Production cycle is the time it takes to produce an agricultural commodity from the beginning of the production process until it matures.

Production loss is verifiable damage or destruction with respect to annual growing crops.

Program loans include FO, OL, and EM. In addition, for loan servicing purposes the term includes existing loans for the following programs no longer funded: SW, RL, EE, ST, and RHF.

Prospectus consists of a transmittal letter, a current balance sheet and projected year's budget which is sent to commercial lenders to determine their interest in financing or refinancing specific Agency direct loan applicants and borrowers.

Protective advance is an advance made by the Agency or a lender to protect or preserve the collateral from loss or deterioration.

Quarantine is a quarantine imposed by the Secretary under the Plant Protection Act or animal quarantine laws (as defined in section 2509 of the Food, Agriculture, Conservation and Trade Act of 1990).

Reamortization is the rewriting of rates or terms, or both, of a loan made for real estate purposes.

Reasonable rates and terms are those commercial rates and terms that other farmers are expected to meet when borrowing from a commercial lender or private source for a similar purpose and similar period of time. The ''similar period of time'' of available commercial loans will be measured against, but need not be the same as, the remaining or original term of the loan.

Recoverable cost is a loan cost expense chargeable to either a borrower or property account.

Recreation loan is a loan that was made to eligible applicants to assist in the conversion of all or a portion of the farm they owned or operated to outdoor income producing recreation enterprises to supplement or supplant farm income. RL's are no longer funded, however, such outstanding loans are serviced by the Agency.

Redemption right is a Federal or state right to reclaim property for a period of time established by law, by paying the amount paid at the involuntary sale plus accrued interest and costs.

Related by blood or marriage is being connected to one another as husband, wife, parent, child, brother, or sister.

Relative is the spouse and anyone having one the following relationships to an applicant or borrower: Parent, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, uncle, aunt, nephew, niece, grandparent, grandson, granddaughter, or the spouses of the foregoing.

Repossessed property is security property in the Agency's custody.

Rescheduling is the rewriting of the rates or terms, or both, of a loan made for operating purposes.

Restructuring see primary loan servicing programs.

Rural youth is a person who has reached the age of 10 but has not reached the age of 21 and resides in a rural area or any city or town with a population of 50,000 or fewer people.

Security is property or right of any kind that is subject to a real or personal property lien. Any reference to ''collateral'' or ''security property'' will be considered a reference to the term ''security.''

Security value is the value of real estate or chattel property (less the value of any prior liens) used as security for an Agency loan.

Shared Appreciation Agreement is an agreement between the Agency, or a lender in the case of a guaranteed loan, and a borrower that requires the borrower who has received a writedown on a direct or guaranteed loan to repay the Agency or the lender some or all of the writedown received, based on a percentage of any increase in the value of the real estate securing an SAA at a future date.

Socially disadvantaged applicant is an applicant who is a member of a socially disadvantaged group. For entity applicants, the majority interest must be held by socially disadvantaged individuals.

Socially disadvantaged group is a group whose members have been subject to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities.

Softwood Timber Program loan was available to eligible financially distressed borrowers who would take marginal land, including highly erodible land, out of production of agricultural commodities other than the production of softwood timber. ST loans are no longer available, however, such outstanding loans are serviced by the Agency.

Soil and Water loan is a loan that was made to an eligible applicant to encourage and facilitate the improvement, protection, and proper use of farmland by providing financing for soil conservation, water development, conservation, and use; forestation; drainage of farmland; the establishment and improvement of permanent pasture; pollution abatement and control; and other related measures consistent with all Federal, State and local environmental standards. SW loans are no longer funded, however, such outstanding loans are serviced by the Agency.

Subordination is a creditor's temporary relinquishment of all or a portion of its lien priority in favor of another creditor, providing the other creditor with a priority right to collect a debt of a specific dollar amount from the sale of the same collateral.

Subsequent loan is any FLP loan processed by the Agency after an initial loan of the same type has been made to the same borrower.

Supervised bank account is an account with a financial institution established through a deposit agreement entered into between the borrower, the Agency, and the financial institution.

Technical appraisal review is a review of an appraisal to determine if such appraisal meets the requirements of USPAP pursuant to standard 3 of USPAP.

Transfer and assumption is the conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of a loan in return for the assuming party's binding promise to pay the debt outstanding or the current market value of the collateral.

Trust is an entity that under applicable state law meets the criteria of being a trust of any kind but does not meet the criteria of being a farm cooperative, private domestic corporation, partnership, or joint operation.

Unaccounted for security is security for a direct or guaranteed loan that was misplaced, stolen, sold, or otherwise missing, where replacement security was not obtained or the proceeds from its sale have not been applied to the loan.

Unauthorized assistance is any loan, loan servicing action, lower interest rate, loan guarantee, or subsidy received by a borrower, or lender in the case of a loan guarantee, for which the borrower or lender was not eligible, or which the Agency obligated from the wrong appropriation or fund. Unauthorized assistance may result from borrower, lender, or Agency error.

Uniform Standards of Professional Appraisal Practice (USPAP) are standards governing the preparation, reporting, and reviewing of appraisals established by the Appraisal Foundation pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

United States is each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

U.S. Attorney is an attorney for the United States Department of Justice.

Veteran is any person who served in the military, naval, or air service during any war as defined in section 101(12) of title 38, United States Code.

Wetlands are those lands or areas of land as determined by the Natural Resources Conservation Service to meet the requirements provided in section 1201(18) of the Food Security Act of 1985.

Working capital is cash available to conduct normal daily farming operations including but not limited to feed, seed, fertilizer, pesticides, farm supplies, cooperative stock, and cash rent.

Youth loan is an operating type loan made to an eligible rural youth applicant to finance a modest income-producing agricultural project.

§ 761.3 Civil rights.

Part 15d of this title contains applicable regulations pertaining to civil rights and filing of discrimination complaints by program participants.

§ 761.4 Conflict of interest.

The Agency enforces conflict of interest policies to maintain high standards of honesty, integrity, and impartiality in the making and servicing of direct and guaranteed loans. These requirements are established in 5 CFR parts 2635 and 8301.

§ 761.5 Restrictions on lobbying.

A person who applies for or receives a loan made or guaranteed by the Agency must comply with the restrictions on lobbying in 7 CFR 3018.

§ 761.6 Appeals.

A direct loan applicant or borrower, or guaranteed loan applicant or borrower and lender, except as provided in 7 CFR 762, may request an appeal or review of an adverse decision made by the Agency in accordance with 7 CFR 11 and 780.

§ 761.7 Appraisals.

(a) *General.* This section describes Agency requirements for:

(1) Real estate and chattel appraisals made in connection with the making

and servicing of direct FLP and Non-program loans; and

(2) Appraisal reviews conducted on appraisals made in connection with the making and servicing of direct and guaranteed FLP and Non-program loans.

(b) *Appraisal standards.* (1) Real estate appraisals, technical appraisal reviews and their respective forms must comply with the standards contained in USPAP, as well as applicable Agency regulations and procedures for the specific FLP activity involved. A current copy of USPAP along with other applicable procedures and regulations are available for review in each Agency State Office.

(2) When a chattel appraisal is required it must be completed on an applicable Agency form (available in each Agency State Office) or other format containing the same information.

(c) *Use of an existing real estate appraisal.* When a real estate appraisal is required, the Agency will use the existing real estate appraisal to reach loan making or servicing decisions under either of the following conditions:

(1) The appraisal was completed within the previous 12 months and the Agency determines that:

(i) The appraisal meets the provisions of this section and the applicable Agency loan making or servicing requirements, and

(ii) Current market values have remained stable since the appraisal was completed; or

(2) The appraisal was not completed in the previous 12 months, but has been updated by the appraiser or appraisal firm that completed the appraisal, and both the update and original appraisal were completed in accordance with USPAP.

(d) *Appraisal reviews.* (1) With respect to a real estate appraisal, the Agency may conduct a technical appraisal review or an administrative appraisal review, or both.

(2) With respect to a chattel appraisal, the Agency may conduct an administrative appraisal review.

§ 761.8 Loan limitations.

(a) *Dollar limits.* The outstanding principal balances for a farm loan applicant or anyone who will sign the promissory note cannot exceed any of the following:

(1) Farm Ownership loans, Beginning Farmer Down payment loans and Soil and Water loans:

(i) Direct—$200,000;

(ii) Guaranteed—$700,000 (for fiscal year 2000 and increased at the beginning of each fiscal year in accordance with paragraph (b) of this section);

(iii) Any combination of a direct Soil and Water loan, direct Farm Ownership loan, guaranteed Soil and Water loan, and guaranteed Farm Ownership loan—$700,000 (for fiscal year 2000 and increased each fiscal year in accordance with paragraph (b) of this section);

(2) Operating loans:

(i) Direct—$200,000;

(ii) Guaranteed—$700,000 (for fiscal year 2000 and increased each fiscal year in accordance with paragraph (b) of this section);

(iii) Any combination of a direct Operating loan and guaranteed Operating loan—$700,000 (for fiscal year 2000 and increased each fiscal year in accordance with paragraph (b) of this section);

(3) Any combination of guaranteed Farm Ownership loan, guaranteed Soil and Water loan, and guaranteed Operating loan—$700,000 (for fiscal year 2000 and increased each fiscal year in accordance with paragraph (b) of this section);

(4) Any combination of direct Farm Ownership loan, direct Soil and Water loan, direct Operating loan, guaranteed Farm Ownership loan, guaranteed Soil and Water loan, and guaranteed Operating loan—the amount in paragraph (a)(1)(ii) of this section plus $200,000;

(5) Emergency loans—$500,000;

(6) Any combination of direct Farm Ownership loan, direct Soil and Water loan, direct Operating loan, guaranteed Farm Ownership loan, guaranteed Soil and Water loan, guaranteed Operating loan, and Emergency loan—the amount in paragraph (a)(1)(ii) of this section plus $700,000.

(b) *Guaranteed loan limit.* The dollar limits of guaranteed loans will be increased each fiscal year based on the percentage change in the Prices Paid by Farmers Index as compiled by the National Agricultural Statistics Service, USDA. The maximum loan limits for the current fiscal year are available in any FSA office and on the FSA website at *http://www.fsa.usda.gov*.

(c) *Line of credit advances.* The total dollar amount of guaranteed line of credit advances and income releases cannot exceed the total estimated expenses, less interest expense, as indicated on the borrower's cash flow budget, unless the cash flow budget is revised and continues to reflect a feasible plan.

§ 761.9 Interest rates for direct loans.

Interest rates for all direct loans are set in accordance with the Act. A copy of the current interest rates may be obtained in any Agency office.

§ 761.10 Planning and performing construction and other development.

(a) *Purpose.* This section describes Agency policies regarding the planning and performing of construction and other development work performed with:

(1) Direct FLP loan funds; or

(2) Insurance or other proceeds resulting from damage or loss to direct loan security.

(b) *Funds for development work.* The applicant or borrower:

(1) Must provide the Agency with an estimate of the total cash cost of all planned development prior to loan approval;

(2) Must show proof of sufficient funds to pay for the total cash cost of all planned development at or before loan closing;

(3) Must not incur any debts for materials or labor or make any expenditures for development purposes prior to loan closing with the expectation of being reimbursed from Agency loan funds.

(c) *Scheduling, planning, and completing development work.* The applicant or borrower:

(1) Is responsible for scheduling and planning development work in a manner acceptable to the Agency and must furnish the Agency information fully describing the planned development, the proposed schedule, and the manner in which it will be accomplished;

(2) Is responsible for obtaining all necessary State and local construction approvals and permits prior to loan closing;

(3) Must ensure that all development work meets the environmental requirements established in 7 CFR 799;

(4) Must schedule development work to start as soon as feasible after the loan is closed and be completed as quickly as practicable;

(5) Is responsible for obtaining any required technical services from qualified technicians, tradespeople, and contractors.

(d) *Construction and repair standards.* (1) The construction of a new building and the alteration or repair of an existing building must conform with industry-acceptable construction practices and standards.

(2) All improvements to a property must conform to applicable laws, ordinances, codes, and regulations.

(3) The applicant or borrower is responsible for selecting a design standard that meets all applicable local and state laws, ordinances, codes, and regulations, including building, plumbing, mechanical, electrical, water, and waste management.

(4) The Agency will require drawings, specifications, and estimates to fully describe the work as necessary to protect the Government's financial interests. The drawings and specifications must identify any specific development standards being used. Such information must be sufficiently complete to avoid any misunderstanding as to the extent, kind, and quality of work to be performed.

(5) The Agency will require technical data, tests, or engineering evaluations to support the design of the development as necessary to protect the Government's financial interests.

(6) The Agency will require the applicant or borrower to provide written certification that final drawings and specifications conform with the applicable development standard as necessary to protect the Government's financial interests. Certification shall be obtained from individuals or organizations trained and experienced in the compliance, interpretation, or enforcement of the applicable development standards, such as licensed architects, professional engineers, persons certified by a relevant national model code organization, authorized local building officials, or national code organizations.

(e) *Inspection.* (1) The applicant or borrower is responsible for inspecting development work as necessary to protect their interest.

(2) The applicant or borrower must provide the Agency written certification that the development conforms to the plans and good construction practices, and complies with applicable laws, ordinances, codes and regulations.

(3) The Agency will require the applicant or borrower to obtain professional inspection services during construction as necessary to protect the Government's financial interests.

(4) Agency inspections do not create or imply any duty or obligation of the Government to the applicant or borrower.

(f) *Warranty and lien waivers.* The applicant or borrower must obtain and submit all lien waivers on any construction before the Agency will issue final payment.

(g) *Surety.* The Agency will require surety to guarantee both payment and performance for construction contracts as necessary to protect the Government's financial interests.

(h) *Changing the planned development.* An applicant or borrower must request, in writing, Agency approval for any change to a planned development. The Agency will approve a change if all of the following are met:

(1) It will not reduce the value of the Agency's security;

(2) It will not adversely affect the soundness of the operation;

(3) It complies with all applicable laws and regulations;

(4) It is for an authorized loan purpose;

(5) It is within the scope of the original loan proposal;

(6) If required, documentation that sufficient funding for the full amount of the planned development is approved and available;

(7) If required, surety to cover the full revised development amount has been provided; and

(8) The modification is certified in accordance with § 761.10(d)(6).

§§ 761.11–761.50 [Reserved]

Subpart B—Supervised Bank Accounts

§ 761.51 Establishing a supervised bank account.

(a) The borrower may select the financial institution in which the account will be established, provided the institution is Federally insured. If the borrower does not select an institution, the Agency will choose one.

(b) Only one supervised bank account will be established for any borrower.

(c) When two co-borrowers sign an FLP note and security agreement, the supervised bank account will be established as a joint tenancy account with right of survivorship from which either borrower can withdraw funds.

(d) If the funds to be deposited into the account cause the balance to exceed $100,000, the financial institution must agree to pledge acceptable collateral with the Federal Reserve Bank for the excess over $100,000, before the deposit is made.

(1) If the financial institution is not a member of the Federal Reserve System, the institution must pledge acceptable collateral with a correspondent bank that is a member of the Federal Reserve System. The correspondent bank must inform the Federal Reserve Bank that it is holding securities pledged for the supervised bank account in accordance with 31 CFR part 202 (Treasury Circular 176).

(2) When the balance in the account has been reduced, the financial institution may request a release of part or all of the collateral, as applicable, from the Agency.

§ 761.52 Deposits into a supervised bank account.

(a) Checks or money orders may be deposited into a supervised bank account provided they are not payable:

(1) Solely to the Federal Government or any agency thereof; or

(2) To the Treasury of the United States as a joint payee.

(b) Loan proceeds may be deposited electronically.

§ 761.53 Interest bearing accounts.

(a) A supervised bank account shall, if possible, be established as an interest bearing deposit account provided that the funds will not be immediately disbursed, and the account is held jointly by the borrower and the Agency if this arrangement will benefit the borrower.

(b) Interest earned on a supervised bank account will be treated as normal income security.

§ 761.54 Withdrawals from a supervised bank account.

(a) The Agency will authorize a withdrawal from the supervised bank account for an approved purpose after ensuring that:

(1) Sufficient funds in the supervised bank account are available;

(2) No loan proceeds are disbursed prior to confirmation of proper lien position, except to pay for lien search if needed;

(3) No checks are issued to ''cash''; and

(4) The use of funds is consistent with the current farm operating plan or other agreement with the Agency.

(b) A check must be signed by the borrower with countersignature of the Agency, except as provided in paragraph (c) of this section. All checks must bear the legend ''countersigned, not as co-maker or endorser.''

(c) The Agency will withdraw funds from a supervised bank account without borrower counter signature only for the following purposes:

(1) For application on Agency indebtedness;

(2) To refund Agency loan funds;

(3) To protect the Agency's lien or security;

(4) To accomplish a purpose for which such advance was made; or

(5) In the case of a deceased borrower, continue to pay necessary farm expenses to protect Agency security in conjunction with the borrower's estate.

§ 761.55 Closing a supervised bank account.

(a) If the supervised bank account is no longer needed and the loan account is not paid in full, the Agency will determine the source of the remaining funds in the supervised bank account. If the funds are determined to be:

(1) Loan funds and the balance is less than $100, the Agency will provide the

balance to the borrower to use for authorized loan purposes;

(2) Loan funds and the balance is $100 or greater, the Agency will apply the balance to the FLP loan;

(3) Normal income funds, the Agency will apply the balance to the remaining current year's scheduled payments and pay any balance to the borrower; and

(4) Basic security funds, the Agency will apply the balance to the FLP loan as an extra payment or the borrower may apply the balance toward the purchase of basic security, provided the Agency obtains a lien on such security and its security position is not diminished.

(b) If the borrower is uncooperative in closing a supervised bank account, the Agency will make written demand to the financial institution for the balance and apply it in accordance with paragraph (a) of this section.

(c) In the event of a borrower's death, the Agency may:

(1) Apply the balance to the borrower's FLP loan;

(2) Continue with a remaining borrower, provided the supervised bank account was established as a joint tenancy with right of survivorship account;

(3) Refund unobligated balances from other creditors in the supervised bank account for specific operating purposes in accordance with any prior written agreement between the Agency and the deceased borrower; or

(4) Continue to pay expenses from the supervised bank account in conjunction with the borrower's estate.

§§ 761.56–761.100 [Reserved]

Subpart C—Supervised Credit

§ 761.101 Applicability of this subpart.

This subpart applies to all direct FLP applicants and borrowers, except borrowers with only Non-program loans.

§ 761.102 Borrower recordkeeping, reporting, and supervision.

(a) A borrower must maintain accurate records sufficient to make informed management decisions and to allow the Agency to render loan making and servicing decisions in accordance with Agency regulations. These records must include the following:

(1) Production (*e.g.*, total and per unit for livestock and crops);

(2) Revenues, by source;

(3) Other sources of funds, including borrowed funds;

(4) Operating expenses;

(5) Interest;

(6) Family living expenses;

(7) Profit and loss;

(8) Tax-related information;

(9) Capital expenses;

(10) Outstanding debt; and

(11) Debt repayment.

(b) A borrower also must agree in writing to:

(1) Cooperate with the Agency and comply with all supervisory agreements, farm assessments, farm operating plans, year-end analyses, and all other loan-related requirements and documents;

(2) Submit financial information and an updated farm operating plan when requested by the Agency;

(3) Immediately notify the Agency of any proposed or actual significant change in the farming operation;

(4) Within 30 days, notify the Agency of any significant changes in family income, expenses, or the development of problem situations; and

(5) Immediately report any losses or proposed significant changes in the security for Agency loans.

(c) If the borrower fails to comply with these requirements, unless due to reasons outside the borrower's control, the non-compliance will be a factor to be considered in determining eligibility for future Agency loans, servicing, or both.

§ 761.103 Farm assessment.

(a) The Agency assesses each operation to determine the applicant's financial condition, organizational structure, management strengths and weaknesses, appropriate levels of Agency oversight, credit counseling needs, and training needs. The applicant will participate in developing the assessment.

(b) The initial assessment must evaluate, at a minimum, the:

(1) Farm organization and key personnel qualifications;

(2) Type of farming operation;

(3) Goals for the farming operation;

(4) Adequacy of real estate, including facilities, to conduct the operation;

(5) Adequacy of chattel property used to conduct the operation;

(6) Historical performance;

(7) Farm operating plan;

(8) Loan evaluation;

(9) Supervisory plan; and

(10) Training plan.

(c) An assessment update must be prepared for each subsequent loan. The update must include a farm operating plan, a loan evaluation, and any other items discussed in paragraph (b) of this section that have significantly changed since the initial assessment.

(d) The Agency reviews the assessment to determine a borrower's progress at least annually. A review will be in the form of an office visit, field visit, letter, phone conversation, or year-end analysis, as determined by the Agency.

§ 761.104 Year-end analysis.

(a) The Agency conducts a year-end analysis at its discretion or if the borrower:

(1) Has received any direct loan, chattel subordination, or primary loan servicing action within the last year;

(2) Is financially distressed or delinquent;

(3) Has a loan deferred, excluding deferral of an installment under subpart B of part 766; or

(4) Is receiving a limited resource interest rate on any loan.

(b) To the extent practicable, the year-end analysis will be completed within 60 days after the end of the business year or farm budget planning period and must include:

(1) An analysis comparing actual income, expenses, and production to projected income, expenses, and production for the preceding production cycle; and

(2) An updated farm operating plan.

§§ 761.105–761.200 [Reserved]

Subpart D—Allocation of Farm Loan Programs Funds to State Offices

§ 761.201 Purpose.

(a) This subpart describes the methods and formulas the Agency uses to allocate FLP funds to State Offices. State funding information is available for review in any State Office.

(b) This subpart addresses:

(1) The allocation of funds for direct and guaranteed:

(i) FO loans,

(ii) OL loans;

(2) The establishment of socially disadvantaged target participation rates; and

(3) The reservation of loan funds for beginning farmers.

(c) The Agency does not allocate EM loan funds to State Offices but makes funds available following a designated or declared disaster. EM loan funds are available on a first-come first-served basis.

§ 761.202 Timing of the allocation of Farm Ownership and Operating loan funds.

The Agency's National Office allocates funds for FO and OL loans to the State Offices on a fiscal year basis, as made available by the Office of Management and Budget. However, the National Office will retain control over the funds when funding or administrative constraints make allocation to State Offices impractical.

§ 761.203 National reserves for Farm Ownership and Operating loans.

(a) *Reservation of funds.* At the start of each fiscal year, the National Office reserves a portion of the funds available for each direct and guaranteed loan program. These reserves enable the Agency to meet unexpected or justifiable program needs during the fiscal year.

(b) *Allocation of reserved funds.* The National Office distributes funds from the reserve to one or more State Offices to meet a program need or Agency objective.

§ 761.204 Methods of allocating funds to State Offices.

FO and OL loan funds are allocated to State Offices using one or more of the following allocation methods:

(a) Formula allocation, if data, as specified in § 761.205, is available to use the formula for the State.

(b) Administrative allocation, if the Agency cannot adequately meet program objectives with a formula allocation. The National Office determines the amount of an administrative allocation on a case-by-case basis.

(c) Base allocation, to ensure funding for at least one loan in each State, District, or County Office. In making a base allocation, the National Office may use criteria other than those used in the formula allocation, such as historical Agency funding information.

§ 761.205 Computing the formula allocation.

(a) The formula allocation for FO or OL loan funds is equal to:

(1) The amount available for allocation by the Agency minus the amounts held in the National Office reserve and distributed by base and administrative allocation, multiplied by

(2) The State Factor, which represents the percentage of the total amount of the funds for a loan program that the National Office allocates to a State Office.

formula allocation = (amount available for allocation − national reserve − base allocation − administrative allocation) × State Factor

(b) To calculate the State Factor, the Agency:

(1) Uses the following criteria, data sources, and weights:

Criteria	Loan type criterion is used for	Data source	Weight for farm ownership loans (percent)	Weight for operating loans (percent)
Farm operators with sales of $2,500–$39,999 and less than 200 days work off the farm.	FO and OL loans	U.S. Census of Agriculture	15	15
Farm operators with sales of $40,000 or more and less than 200 days work off farm.	FO and OL loans	U.S. Census of Agriculture	35	35
Tenant farm operators	FO and OL loans	U.S. Census of Agriculture	25	20
Three-year average net farm income	FO and OL loans	USDA Economic Research Service	15	15
Value of farm real estate assets	FO loans	USDA Economic Research Service	10	N/A
Value of farm non-real estate assets	OL loans	USDA Economic Research Service	N/A	15

(2) Determines each State's percentage of the national total for each criterion;

(3) Multiplies the percentage for each State determined in paragraph (b)(2) of this section by the applicable weight for that criterion;

(4) Sums the weighted criteria for each State to obtain the State factor.

§ 761.206 Pooling of unobligated funds that have been allocated to State Offices.

The Agency periodically pools unobligated FO and OL loan funds that have been allocated to State Offices. When pooling these funds, the Agency places all unobligated funds in the appropriate National Office reserve. The pooled funds may be retained in the national reserve or be reallocated to the States.

§ 761.207 Distribution of Farm Ownership and Operating loan funds by State Offices.

A State Office may distribute its allocation of loan funds to District or County level using the same allocation methods that are available to the National Office. State Offices may reserve a portion of the funds to meet unexpected or justifiable program needs during the fiscal year.

§ 761.208 Target participation rates for socially disadvantaged groups.

(a) *General policies.* (1) *FO and OL loan rates.* The Agency establishes target participation rates for providing FO and OL loans to members of socially disadvantaged groups.

(2) *State and County rates.* The Agency sets the target participation rates for State and County levels annually.

(3) *Indian Reservations.* When distributing loan funds in counties within Indian reservations, the Agency will allocate the funds on a reservation-wide basis.

(4) *Reservation of funds.* The Agency reserves and allocates sufficient loan funds to achieve these target participation rates. The Agency may also use funds that are not reserved and allocated for socially disadvantaged groups to make or guarantee loans to members of socially disadvantaged groups.

(b) *FO loan target participation rate for socially disadvantaged groups based on ethnicity or race.*

(1) *State participation rate.* The FO loan target participation rate for socially disadvantaged groups based on ethnicity or race in each State is equal to the percent of the total rural population in the State who are members of such socially disadvantaged groups.

(2) *County participation rate.* The FO loan target participation rate for socially disadvantaged groups based on ethnicity or race in each county is equal to the percent of rural population in the county who are members of such socially disadvantaged groups.

(c) *OL loan target participation rate for socially disadvantaged groups based on ethnicity or race.*

(1) *State participation rate.* The OL loan target participation rate for socially disadvantaged groups based on ethnicity or race in each State is equal to the percent of the total number of farmers in the State who are members of such socially disadvantaged groups.

(2) *County participation rate.* The OL loan target participation rate for socially disadvantaged groups based on ethnicity or race in each county is equal to the percent of the total number of farmers in the county who are members of socially disadvantaged ethnic groups.

(d) *Target participation rate for women farmers.* (1) *State participation rate.* The target participation rate for

women farmers in each State is equal to the percent of farmers in the State who are women.

(2) *County participation rate.* The target participation rate for women farmers in each county is equal to the percent of farmers in the county who are women.

(3) *Consideration of women that are current and potential farmers.* In developing target participation rates for women, the Agency will consider the number of women who are current farmers and potential farmers.

§ 761.209 Reservation of Farm Ownership and Operating loan funds for beginning farmers.

Each fiscal year, the Agency reserves a portion of direct and guaranteed FO and OL loan funds for beginning farmers in accordance with section 346(b)(2) of the Act.

§ 761.210 Transfer of funds.

(a) If sufficient unsubsidized guaranteed OL funds are available, then beginning on:

(1) August 1 of each fiscal year, the Agency will use available unsubsidized guaranteed OL loan funds to make approved direct FO loans to beginning farmers under the Beginning Farmer Downpayment loan program; and

(2) September 1 of each fiscal year the Agency will use available unsubsidized guaranteed OL loan funds to make approved direct FO loans to beginning farmers.

(b) On September 1 of each fiscal year, the Agency may utilize unused EM loan funds to fund credit sales. The Agency may not transfer any EM loan funds resulting from supplemental appropriations.

§§ 761.211—761.250 [Reserved]

PART 762—GUARANTEED FARM LOANS

2. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, 42 U.S.C. 1480.

3. Amend § 762.101 as follows:

a. Revise paragraphs (b) and (c) introductory text;

b. Remove paragraph (c)(1) and redesignate paragraphs (c)(2) as (c)(1), (c)(2)(i) through (iii) as (c)(1)(i) through (iii) and (c)(3) as (c)(2).

The revised text reads as follows:

§ 762.101 Introduction

* * * * *

(b) Lender list. The Agency maintains a current list of lenders who express a desire to participate in the guaranteed loan program. This list is made available to farmers upon request.

(c) Lender classification.

* * * * *

4. Revise § 762.102 to read as follows:

§ 762.102 Abbreviations and definitions.

Abbreviations and definitions for terms used in this part are provided in § 761.2 of this chapter.

5. Add paragraph (g) to § 762.110 to read as follows:

§ 762.110 Loan applications.

* * * * *

(g) *Market Placement Program.* When the Agency determines that a direct loan applicant or borrower may qualify for guaranteed credit, the Agency may submit the applicant or borrower's financial information to one or more guaranteed lenders. If a lender indicates interest in providing financing to the applicant or borrower through the guaranteed loan program, the Agency will assist in completing the application for a guarantee.

§ 762.120 [Amended]

6. In paragraph (a) of § 762.120, remove the word ''CONACT'' and add in its place the word ''Act.''

§ 762.121 [Amended]

7. In paragraph (b)(1) of § 762.121, remove the words ''1943, subpart A, of this title'' and add in their place, the words ''part 764 of this chapter.''

8. Amend § 762.122 by revising paragraph (a).

§ 762.122 Loan limitations.

(a) *Dollar limits.* Maximum loan limits are published in § 761.8.

* * * * *

§ 762.124 [Amended]

9. In paragraph (e)(3) of § 762.124, remove the words ''1943, subpart A, of this title'' and add in their place, the words ''part 764 of this chapter.''

§ 762.128 [Amended]

10. Amend § 762.128 as follows:

a. In paragraph (a), remove the words, ''1940, subpart G of this title'' and add in their place, the words ''part 799 of this chapter.''

b. In paragraph (c)(3), remove the words, ''part 1940, subpart G, and part 1901, subpart F, of this title'' and add in their place, the words ''part 799 of this chapter.''

c. In paragraph (c)(4), remove the word ''CONACT'' and add in its place the word ''Act.''

PART 763—[RESERVED]

11. Add and reserve part 763.

12. Revise part 764 to read as follows:

PART 764—DIRECT LOAN MAKING

Subpart A—Overview

Sec.
764.1 Purpose.
764.2 Types of loans.
764.3 Abbreviations and definitions.
764.4–764.50 [Reserved]

Subpart B—Loan Application Process

764.51 Loan application.
764.52 Processing an incomplete application.
764.53 Processing the complete application.
764.54 Acting on complete applications.
764.55 Preferences when there is limited funding.
764.56–764.100 [Reserved]

Subpart C—Requirements for All Direct Program Loans

764.101 General eligibility requirements.
764.102 General limitations.
764.103 General security requirements.
764.104 General real estate security requirements.
764.105 General chattel security requirements.
764.106 Exceptions to security requirements.
764.107 General appraisal requirements for real estate and chattel.
764.108 General insurance requirements.
764.109–764.150 [Reserved]

Subpart D—Farm Ownership Loan Program

764.151 Farm Ownership loan uses.
764.152 Eligibility requirements.
764.153 Limitations.
764.154 Rates and terms.
764.155 Security requirements.
764.156—764.200 [Reserved]

Subpart E—Beginning Farmer Downpayment Loan Program

764.201 Beginning Farmer Downpayment loan uses.
764.202 Eligibility requirements.
764.203 Limitations.
764.204 Rates and terms.
764.205 Security requirements.
764.206–764.250 [Reserved]

Subpart F—Operating Loan Program

764.251 Operating loan uses.
764.252 Eligibility requirements.
764.253 Limitations.
764.254 Rates and terms.
764.255 Security requirements.
764.256–764.300 [Reserved]

Subpart G—Youth Loan Program

764.301 Youth loan uses.
764.302 Eligibility requirements.
764.303 Limitations.
764.304 Rates and terms.
764.305 Security requirements.
764.306–764.350 [Reserved]

Subpart H—Emergency Loan Program

764.351 Emergency loan uses.
764.352 Eligibility requirements.
764.353 Limitations.
764.354 Rates and terms.
764.355 Security requirements.
764.356 Appraisal and valuation requirements.

764.357–764.400 [Reserved]

Subpart I—Loan Decision and Closing

764.401 Loan decision.
764.402 Loan closing.
764.403–764.450 [Reserved]

Subpart J—Borrower Training and Training Vendor Requirements

764.451 Purpose.
764.452 Borrower training requirements.
764.453 Agency waiver of training requirements.
764.454 Actions that a borrower must take when training is required.
764.455 Potential training vendors.
764.456 Applying to be a vendor.
764.457 Vendor Requirements.
764.458 Vendor approval.
764.459 Evaluation of borrower progress.
764.460–764.500 [Reserved]

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A—Overview

§ 764.1 Purpose.

This part describes the Agency's policies for making direct FLP loans.

§ 764.2 Types of loans.

The Agency makes the following types of loans:

(a) FO, including Beginning Farmer Downpayment loans;

(b) OL, including Youth loans; and

(c) EM.

§ 764.3 Abbreviations and definitions.

Abbreviations and definitions for terms used in this part are provided in § 761.2 of this chapter.

§§ 764.4–764.50 [Reserved]

Subpart B—Loan Application Process

§ 764.51 Loan application.

(a) A complete loan application, except as provided in paragraphs (b) through (d) of this section, will include:

(1) The completed Agency application form;

(2) If the applicant is an entity:

(i) A complete list of entity members showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or stock held in the entity by each member, or the percentage of interest in the entity held by each member;

(ii) A current personal financial statement from each member of the entity;

(iii) A current financial statement from the entity itself;

(iv) A copy of the entity's charter or any entity agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing), and a resolution adopted by the Board of Directors or entity members authorizing specified officers of the entity to apply for and obtain the desired loan and execute required debt, security and other loan instruments and agreements;

(3) A written description of the applicant's farm training and experience, including each entity member who will be involved in managing or operating the farm;

(4) The last 3 years of farm financial records, unless the applicant has been farming less than 3 years;

(5) The last 3 years of farm production records, unless the applicant has been farming less than 3 years;

(6) Documentation that the applicant and each member of an entity applicant cannot obtain sufficient credit elsewhere on reasonable rates and terms, including a loan guaranteed by the Agency;

(7) Documentation of compliance with the Agency's environmental regulations contained in 7 CFR 799;

(8) Verification of all non-farm income of the applicant;

(9) The farm's operating plan, including the projected cash flow budget reflecting production, income, expenses, and loan repayment plan;

(10) A legal description of the farm property owned or to be acquired and, if applicable, any leases, contracts, options, and other agreements with regard to the property;

(11) Payment to the Agency for ordering a credit report on the applicant;

(12) Verification of all debts of the applicant;

(13) Any additional information deemed necessary by the Agency to effectively evaluate the applicant's eligibility and plan of operation; and

(14) For EM loans, a statement of loss or damage on the appropriate Agency form.

(b) For a Lo-Doc OL request, the applicant must:

(1) Be current on all payments to all creditors including the Agency (if an Agency borrower);

(2) Have not received primary loan servicing on any Agency debt within the past 5 years; and

(3) Meet one of the following sets of criteria:

(i) The loan requested is $50,000 or less and the total outstanding Agency OL loan debt at the time of loan closing will be less than $100,000; or

(ii) The loan requested is to pay annual operating expenses and the applicant is an existing Agency borrower who has received and timely repaid at least two previous annual OL loans from the Agency.

(4) Submit items (1), (2), (7), (9), and (11) of paragraph (a) of this section. The Agency may require a Lo-Doc applicant to submit any other information listed in paragraph (a) of this section as needed to make a determination on the loan application.

(c) For a youth loan request:

(1) The applicant must submit items (1), (7), (8), (9) and (10) of paragraph (a) of this section.

(2) Applicants 18 years or older, must also provide items (11) and (12) of paragraph (a) of this section.

(3) The Agency may require a youth loan applicant to submit any other information listed in paragraph (a) of this section as needed to make a determination on the loan application.

(d) The applicant need not submit any information under this section that already exists in the applicant's Agency file and is still current.

§ 764.52 Processing an incomplete application.

(a) Within 10 days of receipt of an incomplete application, the Agency will provide the applicant written notice of any additional information which must be provided. The applicant must provide the additional information within 20 calendar days of the date of this notice.

(b) If the additional information is not received, the Agency will provide written notice that the application will be withdrawn if the information is not received within 10 calendar days of the date of this second notice.

§ 764.53 Processing the complete application.

Upon receiving a complete loan application, the Agency will:

(a) Consider the loan application in the order received, based on the date the application was determined to be complete; and

(b) Provide written notice to the applicant that the application is complete.

§ 764.54 Acting on complete applications.

(a) Within 60 calendar days after receiving a complete loan application, the Agency will complete the processing of the loan request.

(b) If, based on the Agency's review of the application, it appears the applicant's credit needs could be met through the guaranteed loan program, the Agency will assist the applicant in securing guaranteed loan assistance under the market placement program in accordance with § 762.110(g) of this chapter.

(c) In the absence of funds for a direct loan program, the Agency will keep an approved loan application on file until funding is available. At least annually

the Agency will contact the applicant to determine if the Agency should retain the application or if the applicant wants the application withdrawn.

(d) If funding becomes available, the Agency will resume processing of approved loans in accordance with this part.

§ 764.55 Preferences when there is limited funding.

(a) *First priority.* When there is a shortage of loan funds, approved applications will be funded in the order of the date the application was received, whether or not complete.

(b) *Secondary priorities.* If two or more applications were received on the same date, the Agency will give preference to:

(1) First, an applicant who is a veteran of any war, as defined in 38 U.S.C. 101(12);

(2) Second, an applicant who is not a veteran, but:

(i) Has a dependent family;

(ii) Is able to make a down payment; or

(iii) Owns livestock and farm implements necessary to farm successfully.

(3) Third, to other eligible applicants.

§§ 764.56—764.100 [Reserved]

Subpart C—Requirements for All Direct Program Loans

§ 764.101 General eligibility requirements.

FLP loan applicants must meet all of the following requirements, unless otherwise provided in the eligibility requirements for the particular type of loan.

(a) *No prior drug convictions.* The applicant, and all entity members, in the case of an entity applicant, must not have been convicted under Federal or state law, within the last five crop years, of planting, cultivating, growing, producing, harvesting, or storing a controlled substance, as defined at 21 CFR part 1308.

(b) *Legal capacity.* The applicant must possess the legal capacity to incur the obligation of the loan. A Youth loan applicant will incur full personal liability upon execution of the promissory note without regard to the applicant's minority status.

(c) *Citizenship.* The applicant must be a citizen of the United States, United States non-citizen national, or a qualified alien under applicable Federal immigration laws. For an entity applicant, the majority of the entity must be owned by members meeting the citizenship test or other entities that are domestically owned.

(d) *Credit history.* The applicant must have acceptable credit history demonstrated by debt repayment. A history of failures to repay past debts as they came due when the ability to repay was within the applicant's control will demonstrate unacceptable credit history. As part of the credit history the Agency will determine whether the applicant will make a sincere effort to repay the loan, devote the effort required to carry out the terms and conditions of the loan, and deal with the Agency in good faith. This includes the applicant providing current, complete, and truthful information when applying for assistance and in all past dealings with the Agency. In making this determination, the Agency may examine whether the applicant has properly fulfilled its obligations to other parties, including other agencies of the Federal Government.

(e) *Availability of credit elsewhere.* The applicant, and all entity members in the case of an entity applicant, must be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms. The Agency will evaluate the applicant's ability to obtain credit based on factors including, but not limited to:

(1) Loan amounts, rates, and terms available in the marketplace; and

(2) An applicant's property interests, income, and significant nonessential assets.

(f) *Not delinquent on Federal debt.* Except for EM loan applicants, the applicant, and anyone who will execute the promissory note, must not be delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986 at the time of loan closing. However, debt under the Internal Revenue Code of 1986, will be considered in determining creditworthiness and ability to repay.

(g) *Outstanding judgements.* The applicant, and anyone who will execute the promissory note, must have no outstanding unpaid judgements obtained by the United States in any court. Such judgements do not include those filed as a result of action in the United States Tax Courts.

(h) *Managerial ability.* The applicant must have sufficient managerial ability to assure reasonable prospects of loan repayment, as determined by the Agency. The applicant must demonstrate this managerial ability by education, on-the-job training, or farming experience within the last five years. The farming experience must cover at least one entire production cycle.

(i) *Borrower training.* The applicant must agree to meet the training requirements in subpart J of this part.

(j) *Family farm.* Depending on the type of loan requested, the applicant must be the owner-operator or tenant-operator of a family farm after the loan is closed. For an entity applicant:

(1) All members must be involved in the operation;

(2) Any other farming operations, in which any of the members are owners, must be no larger than a family farm; and

(3) Except for EM loans, the collective interests of the members may be larger than a family farm only if:

(i) Each member's ownership interest is not larger than a family farm; and

(ii) All of the members of the entity are related by blood or marriage.

(k) *Entity composition.* If the applicant is an entity, the entity must not be:

(1) An estate or trust, unless the trust would qualify as a joint operation;

(2) A corporation, partnership, or joint operation with 50 percent or more of the ownership held solely or in a combination by another estate, trust, corporation, a partnership, or a joint operation; and

(3) An integrated livestock, poultry, or aquaculture processor who operates primarily and directly as commercial business through contracts or business arrangements with farmers.

§ 764.102 General limitations.

(a) *Program limitations.* Limitations specific to each loan program are contained in subparts D through H of this part.

(b) *General limitations.* (1) *Maximum loan limits.* The total principal balance owed to the Agency at any one time by the applicant, or any one who will sign the promissory note, cannot exceed the limits established in § 761.8.

(2) *Loan funds used in the United States.* The funds from the Agency loan must be used for farming operations located in the United States.

(3) *Highly erodible land and wetlands conversion.* The Agency will not make a loan for any purpose that contributes to excessive erosion of highly erodible land, as determined by the Agency, or to the conversion of wetlands to produce an agricultural commodity.

(4) *Construction.* Any construction financed by the Agency must comply with the standards established in § 761.10.

(5) *Noncontiguous tracts.* The Agency will not make a loan if the distance between the tracts to be farmed will prevent an efficient farming operation.

(6) *Non-eligible enterprise.* Loan funds will not be used to establish or support

a non-eligible enterprise, even if the non-eligible enterprise contributes to the farm.

§ 764.103 General security requirements.

(a) *Program security requirements.* Security requirements specific to each loan program are outlined in subparts D through H.

(b) *Security requirements.* (1) *Adequate security.* All loans must be secured by assets having a security value equal to 100 percent of the loan amount, except for EM loans as provided in subpart H of this part. If the applicant's assets do not provide adequate security, the Agency may accept:

(i) A pledge of security from a third party; or

(ii) Interests in property not owned by the applicant (such as leases that provide a mortgageable value, water rights, easements, mineral rights, and royalties).

(2) *Additional security.* An additional amount of security up to 150 percent of the loan amount will be taken when available, except for beginning farmer downpayment loans and youth loans.

(3) *Choice of security.* The Agency will choose the best security available when there are several alternatives that meet the Agency's security requirements.

(4) *Non-essential assets.* The Agency will take a lien on all assets that are not essential to the farming operation and are not being converted to cash to reduce the loan amount when each such asset has a value in excess of $5,000. The value of this security is not included in the Agency's additional security requirement stated in paragraph (b)(2) of this section. This requirement does not apply to beginning farmer downpayment loans and youth loans.

§ 764.104 General real estate security requirements.

(a) *Agency lien position requirements.* If real estate is pledged as security for a loan, the Agency must obtain a first lien, if available. When a first lien is not available, the Agency may take a junior lien under the following conditions:

(1) The prior lien does not contain any provisions that may jeopardize the Agency's interest or an applicant's ability to repay the Agency loan;

(2) Prior lienholders agree to notify the Agency prior to foreclosure;

(3) The applicant must agree not to increase an existing prior lien without the written consent of the Agency; and

(4) Equity in the collateral exists.

(b) *Real estate held under a purchase contract.* If the real estate offered as security is held under a recorded purchase contract:

(1) The applicant must provide a security interest in the real estate.

(2) The applicant and the purchase contract holder must agree in writing that any insurance proceeds received for real estate losses will be used only for one or more of the following purposes:

(i) To replace or repair the damaged real estate improvements which are essential to the farming operation;

(ii) To make other essential real estate improvements; or

(iii) To pay any prior real estate lien, including the purchase contract.

(3) The purchase contract must provide the applicant with possession, control and beneficial use of the property, and entitle the applicant to marketable title upon fulfillment of the contract terms.

(4) The purchase contract must not:

(i) Be subject to summary cancellation upon default;

(ii) Contain provisions which jeopardize the Agency's security position, or the applicant's ability to repay the loan.

(5) The purchase contract holder must agree in writing:

(i) Not to sell or voluntarily transfer their interest without prior written consent of the Agency;

(ii) Not to encumber or cause any liens to be levied against the property;

(iii) Not to take any action to accelerate, forfeit, or foreclose the applicant's interest in the security property until a specified period of time after notifying the Agency of the intent to do so;

(iv) To consent to the Agency making the loan and taking a security interest in the applicant's interest under the purchase contract as security for the Agency loan;

(v) Not to take any action to foreclose or forfeit the interest of the applicant under the purchase contract because the Agency has acquired the applicant's interest by foreclosure or voluntary conveyance, or because the Agency has subsequently sold or assigned the applicant's interest to a third party who will assume the applicant's obligations under the purchase contract;

(vi) If the Agency acquires the applicant's interest under the purchase contract by foreclosure or voluntary conveyance, the Agency will not be deemed to have assumed any of the applicant's obligations under the contract, provided that if the Agency fails to perform the applicant's obligations while it holds the applicant's interest is grounds for terminating the purchase contract;

(vii) To notify the Agency in writing of any breach by the applicant; and

(viii) To give the Agency the option to rectify the conditions that amount to a breach within 30 days after the date the Agency receives written notice of the breach.

(c) *Tribal lands held in trust or restricted.* The Agency will take security on tribal real estate held in trust or of restricted status, provided that the United States Bureau of Indian Affairs provides a title report and approves the lien.

(d) *Security for more than one loan.* The same real estate may be pledged as security for more than one direct or guaranteed loan.

(e) *Loans secured by leaseholds.* A loan may be secured by a mortgage on a leasehold, if the leasehold has negotiable value and can be mortgaged.

§ 764.105 General chattel security requirements.

The same chattel may be pledged as security for more than one direct or guaranteed loan.

§ 764.106 Exceptions to security requirements.

Notwithstanding any other provision of this part, the Agency will not take a security interest:

(a) When adequate security is otherwise available and the lien will prevent the applicant from obtaining credit from other sources;

(b) When the property could have significant environmental problems or costs as described in 7 CFR 799;

(c) When the Agency cannot obtain a valid lien;

(d) When the property is the applicant's personal residence and appurtenances and:

(1) They are located on a separate parcel; and

(2) The real estate that serves as security for the Agency loan plus crops and chattels are greater than or equal to 150 percent of the unpaid balance due on the loan;

(e) When the property is subsistence livestock, cash, special collateral accounts the applicant uses for the farming operation, retirement accounts, personal vehicles necessary for family living, household goods, or small equipment such as hand tools and lawn mowers; or

(f) On marginal land and timber that secures an outstanding ST loan.

§ 764.107 General appraisal requirements for real estate and chattel.

(a) *Establishing value for real estate.* The value of real estate will be established by an appraisal completed in accordance with § 761.7.

(b) *Establishing value for chattels.* The value of chattels will be established as follows:

(1) *Annual production.* The security value of annual livestock and crop production is presumed to be 100 percent of the projected annual income generated from livestock and crop production.

(2) *Livestock and equipment.* The value of livestock and equipment will be established by an appraisal completed in accordance with § 761.7.

§ 764.108 General insurance requirements.

(a) The applicant must obtain and maintain insurance equal to the lesser of the value of the security at the time of loan closing, or the principal of the loan.

(b) All security, except growing crops, must be covered by hazard insurance if it is readily available (sold by insurance agents in the applicant's normal trade area) and economically feasible.

(c) Real estate security located in flood or mudslide prone areas must be covered by flood or mudslide insurance.

(d) Prior to closing the loan, the applicant must have obtained at least the catastrophic risk protection level of crop insurance coverage for the crop during the crop year for which the loan is sought for each crop which is a basic part of the applicant's total farming operation, if such insurance is available, unless the applicant executes a written waiver of any emergency crop loss assistance with respect to such crop.

(e) Growing crops used to provide adequate security must be covered by crop insurance, if such insurance is available.

(f) The applicant must:

(1) List the Agency as loss payee for the insurance indemnity payment or as a beneficiary of a mortgagee loss payable clause; and

(2) In the case of crop insurance, execute an assignment of indemnity in favor of the Agency.

§§ 764.109–764.150 [Reserved]

Subpart D—Farm Ownership Loan Program

§ 764.151 Farm Ownership loan uses.

FO loan funds may only be used to:

(a) Acquire or enlarge a farm or make a down payment on a farm;

(b) Make capital improvements to a farm owned by the applicant, for construction, purchase or improvement of farm dwellings, service buildings or other facilities and improvements essential to the operation. In the case of leased property, the applicant must have a lease to ensure use of the improvement over its useful life or to ensure that the applicant receives compensation for any remaining economic life upon termination of the lease;

(c) Promote soil and water conservation and protection;

(d) Pay loan closing costs;

(e) Refinance a bridge loan if the following conditions are met:

(1) The applicant obtained the loan to be refinanced to purchase a farm after a direct FO was approved;

(2) Direct FO funds were not available to fund the loan at the time of approval;

(3) The loan to be refinanced is temporary financing; and

(4) The loan was made by a commercial or cooperative lender.

§ 764.152 Eligibility requirements.

The applicant:

(a) Must comply with the general eligibility requirements contained in § 764.101;

(b) And anyone who will sign the promissory note, must not have received debt forgiveness from the Agency on any direct or guaranteed loan;

(c) Must be the owner and operator of the farm after the loan is closed;

(d) Except as provided in paragraph (f) of this section, must have participated in the business operations of a farm if the applicant has:

(1) Been the owner, manager or operator of a farm business for the year's complete production and marketing cycles as evidenced by tax returns, FSA farm records or similar documentation;

(2) Been employed as a farm manager or farm management consultant for the year's complete production and marketing cycles; or

(3) Participated in the operation of a farm by virtue of being raised on a farm or having worked on a farm with significant responsibility for the day-to-day decisions for the year's complete production and marketing cycle, which may include selection of seed varieties, weed control programs, input suppliers, or livestock feeding programs or decisions to replace or repair equipment.

(e) And anyone who will sign the promissory note:

(1) Has never received a direct FO loan; or

(2) Must not have had direct FO loans outstanding for more than a total of 10 years prior to the date that the new direct FO loan is closed.

(f) And anyone who will sign the promissory note had direct FO loans outstanding on April 4, 1996:

(1) For less than five years, then the applicant is eligible for FO loans through April 4, 2006.

(2) For five years or more, then the applicant is no longer eligible for direct FO loans.

§ 764.153 Limitations.

The applicant must:

(a) Comply with the general limitations contained in § 764.102;

(b) Have dwellings and other buildings necessary for the planned operation of the farm available for use after the loan is made.

§ 764.154 Rates and Terms.

(a) *Rates.* (1) The interest rate is the Agency's Direct Farm Ownership rate, available in each Agency office.

(2) The limited resource Farm Ownership interest rate is available to applicants who are unable to develop a feasible plan at regular interest rates.

(3) If the FO loan is part of a joint financing arrangement and the amount of the Agency's loan does not exceed 50 percent of the total amount financed, the Agency will use the Farm Ownership participation rate, available in each Agency office.

(b) *Terms.* The Agency schedules repayment of an FO loan based on the applicant's ability to repay and the useful life of the security. In no event will the term be more than 40 years from the date of the note.

§ 764.155 Security requirements.

An FO loan must:

(a) Be secured in accordance with §§ 764.103 through 764.106;

(b) Be secured, at a minimum, by real estate being purchased or improved.

§§ 764.156–764.200 [Reserved]

Subpart E—Beginning Farmer Downpayment Loan Program

§ 764.201 Beginning Farmer Downpayment loan uses.

Beginning Farmer Downpayment loan funds may be used to partially finance the purchase of a family-sized farm by an eligible beginning farmer.

§ 764.202 Eligibility requirements.

The applicant:

(a) Must comply with the general eligibility requirements established at § 764.101;

(b) And anyone who will sign the promissory note, must not have received debt forgiveness from the Agency on any direct or guaranteed loan;

(c) Must be the owner and operator of the farm after the loan is closed;

(d) Must be a beginning farmer.

§ 764.203 Limitations.

(a) The applicant must:

(1) Comply with the general limitations established at § 764.102; and

(2) Must provide a minimum downpayment of 10 percent of the purchase price of the farm.

(b) The purchase price or appraised value of the farm, whichever is lower, must not exceed $250,000.

(c) Beginning Farmer Downpayment loans will not exceed 40 percent of the lesser of the purchase price or appraised value of the farm to be acquired.

(d) Financing provided by the Agency and any other creditor must not exceed 90 percent of the lesser of the purchase price or appraised value of the farm and may be guaranteed by the Agency under part 762 of this chapter.

§ 764.204 Rates and terms.

(a) *Rates.* The interest rate for Beginning Farmer Downpayment loans shall be 4 percent.

(b) *Terms.* (1) The Agency schedules repayment of Beginning Farmer Downpayment loans in equal, annual installments over a term not to exceed 15 years.

(2) The non-Agency financing must have an amortization period of at least 30 years and cannot have a balloon payment due within the first 15 years of the loan.

§ 764.205 Security requirements.

A Beginning Farmer Downpayment loan must:

(a) Be secured in accordance with §§ 764.103 through 764.106;

(b) Be secured by a lien on the property being acquired with the loan funds and junior only to the party financing the balance of the purchase price.

§§ 764.206–764.250 [Reserved]

Subpart F—Operating Loan Program

§ 764.251 Operating loan uses.

OL loan funds may only be used for:

(a) Payment of costs associated with reorganizing a farm to improve its profitability;

(b) Purchase of livestock, including poultry, and farm equipment, quotas and bases, and cooperative stock for credit, production, processing or marketing purposes;

(c) Payment of annual farm operating expenses, including but not limited to, feed, seed, fertilizer, pesticides, farm supplies, repairs and improvements which are to be expensed, cash rent and family subsistence;

(d) Payment of scheduled principal and interest payments on term debt provided the debt is for authorized FO or OL purposes;

(e) Other farm needs;

(f) Payment of costs associated with land and water development, use, or conservation;

(g) Payment of loan closing costs;

(h) Payment of costs associated with Federal or State-approved standards under the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 667) if the applicant can show that compliance or non-compliance with the standards will cause substantial economic injury;

(i) Payment of borrower training costs required or recommended by the Agency;

(j) Refinancing farm-related debts other than real estate to improve farm profitability, if the applicant has refinanced direct or guaranteed OL loans four times or fewer and one of the following conditions is met:

(1) A designated or declared disaster caused the need for refinancing; or

(2) The debts to be refinanced are owed to a creditor other than the USDA;

(k) Payment of costs for minor real estate repairs or improvements, not to exceed $15,000 per year.

§ 764.252 Eligibility requirements.

The applicant:

(a) Must comply with the general eligibility requirements established at § 764.101.

(b) And anyone who will sign the promissory note, except as provided in paragraph (c) of this section, must not have caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the CONACT by debt write-down or write-off; compromise, adjustment, reduction, or charge-off under the provision of section 331 of the CONACT; discharge in bankruptcy; or through payment of a guaranteed loss claim under the same circumstances.

(c) And anyone who will sign the promissory note may receive direct OL loans to pay annual farm operating and family living expenses, provided that the applicant meets all other eligibility requirements, if the applicant:

(1) Received a write-down under section 353 of the CONACT;

(2) Is current on payments under a confirmed reorganization plan under Chapter 11, 12, or 13 of Title 11 of the United States Code; or

(3) Received debt forgiveness on not more than one occasion after April 4, 1996, resulting directly and primarily from a Presidentially-designated emergency for the county in which the applicant operates. Only applicants who were current on all existing direct and guaranteed FLP loans prior to the beginning date of the incidence period of a Presidentially-designated emergency and received debt forgiveness on that debt within three years after the designation of such emergency meet this exception.

(d) And anyone who will sign the promissory note, may close an OL loan in no more than seven calendar years, either as an individual or as a member of an entity, except as provided in paragraph (e) of this section. The years may be consecutive or non-consecutive, and there is no limit on the number of loans closed in a year. Youth loans are not counted toward this limitation.

(e) And anyone who will sign the note who has closed direct OL loans in four or more previous calendar years as of April 4, 1996, is eligible to close direct OL loans in any three additional years after that date.

(f) On a case-by-case basis, may request a one-time waiver of OL term limits for a period of two years, not subject to administrative appeal, if the applicant:

(1) Has a financially viable operation;

(2) Applied for commercial credit from at least two lenders;

(3) Was unable to obtain a commercial loan, including an Agency-guaranteed loan; and

(4) Has successfully completed, or will complete within one year, borrower training. Previous waivers to the borrower training requirements are not applicable under this paragraph.

(g) Whose land is subject to the jurisdiction of an Indian tribe and their loan is secured by one or more security instruments subject to the jurisdiction of an Indian tribe may request a waiver of OL term limits, provided that other credit is not available at reasonable rates and terms.

§ 764.253 Limitations.

The applicant must comply with the general limitations established at § 764.102.

§ 764.254 Rates and terms.

(a) *Rates.* (1) The interest rate is the Agency's Direct Operating Loan rate, available in each Agency office;

(2) The limited resource Operating Loan interest rate is available to applicants who are unable to develop a feasible plan at regular interest rates.

(b) *Terms.* (1) The Agency schedules repayment of annual OL loans made for essential family living and farm operating expenses when planned income is projected to be available, but not to exceed 18 months from the date of the note.

(2) The Agency schedules the repayment of all other OL loans based on the applicant's ability to repay and the useful life of the security. In no event will the term of the loan exceed seven years from the date of the note.

§ 764.255 Security requirements.

An OL loan must be secured:

(a) In accordance with sections 764.103 through 764.106.

(b) By all property or products acquired, produced, or refinanced with loan funds.

§§ 764.256–764.300 [Reserved]

Subpart G—Youth Loan Program

§ 764.301 Youth loan uses.

Youth loan funds may only be used to finance a modest, income-producing, agriculture-related, educational project while participating in 4–H, FFA, or a similar organization.

§ 764.302 Eligibility requirements.

The applicant must:

(a) Comply with the general eligibility requirements established in section 764.101, paragraphs (a) through (g);

(b) Be at least 10 but not yet 21 years of age at the time the loan is closed;

(c) Reside in a rural area or any city or town with a population of 50,000 or fewer people;

(d) Be recommended and continuously supervised by a project advisor, such as a 4–H Club advisor, a vocational teacher, home economics teacher, county extension agent, or other agriculture-related organizational sponsor; and

(e) Obtain a written recommendation and consent from a parent or guardian if an applicant has not reached the age of majority under state law.

§ 764.303 Limitations.

(a) The applicant must comply with the general limitations established at § 764.102(b).

(b) The total principal balance owed by the applicant to the Agency on all Youth loans at any one time cannot exceed $5,000.

§ 764.304 Rates and terms.

(a) *Rates.* (1) The interest rate is the Agency's Direct Operating Loan rate, available in each Agency office.

(2) The limited resource Operating Loan interest rate is not available for Youth loans.

(b) *Terms.* Youth loan terms are the same as for an OL established at § 764.254(b).

§ 764.305 Security requirements.

A first lien will be obtained on property or products acquired or produced with loan funds.

§§ 764.306–764.350 [Reserved]

Subpart H—Emergency Loan Program

§ 764.351 Emergency loan uses.

(a) *Physical losses.* (1) *Real estate losses.* EM loan funds for real estate physical losses may only be used to repair or replace property damaged or destroyed as a result of a disaster as follows:

(i) For any FO purpose, as specified in § 764.151, except paragraph (e) of that section;

(ii) To establish a new site for farm dwelling and service buildings outside of a flood or mudslide area; and

(iii) To replace land from the farm that was sold or conveyed, if such land is necessary for the farming operation to be effective.

(2) *Chattel losses.* EM loan funds for chattel physical losses may only be used to repair or replace property damaged or destroyed as a result of a disaster as follows:

(i) Purchase livestock, farm equipment, quotas and bases, and cooperative stock for credit, production, processing, or marketing purposes;

(ii) Pay customary costs associated with obtaining and closing a loan that an applicant cannot pay from other sources;

(iii) Repair or replace essential household contents damaged in the disaster;

(iv) Pay the costs to restore perennials, which produce an agricultural commodity, to the stage of development the damaged perennials had obtained prior to the disaster;

(v) Pay essential family household expenses, in the case of a farming operation that has suffered livestock losses or losses to stored crops held for sale; and

(vi) Refinance farm-related debts other than real estate to improve farm profitability, if the applicant has refinanced direct or guaranteed loans four times or fewer and one of the following conditions is met:

(A) A designated or declared disaster caused the need for refinancing; or

(B) The debts to be refinanced are owed to a creditor other than the USDA.

(b) *Production losses.* EM loan funds for production of agricultural commodities (except the losses associated with the loss of livestock) may be used to:

(1) Pay costs associated with reorganizing the farm to improve its profitability;

(2) Pay annual operating expenses, which include but are not limited to, feed, seed, fertilizer, pesticides, farm supplies, and cash rent;

(3) Payment of costs associated with Federal or State-approved standards under the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 667) if the applicant can show that compliance or non-compliance with the standards will cause substantial economic injury;

(4) Pay borrower training costs required or recommended by the Agency;

(5) Pay essential family household expenses;

(6) Refinance farm-related debts other than real estate to improve farm profitability, if the applicant has refinanced direct or guaranteed loans four times or fewer and one of the following conditions is met:

(i) A designated or declared disaster caused the need for refinancing; or

(ii) The debts to be refinanced are owed to a creditor other than the USDA; and

(7) Replace lost working capital.

§ 764.352 Eligibility requirements.

(a) *Eligibility requirements.* The applicant:

(1) Must comply with the general eligibility requirements established at § 764.101;

(2) Must be an established farmer;

(3) Must be the owner and operator, or operator as follows:

(i) For a loan made under § 764.351(a)(1), must be:

(A) The owner and operator of the farm at the time of the disaster; or

(B) The operator of the farm at the time of the disaster whose lease on the affected real estate exceeds the term of the loan. The operator will provide prior notification to the Agency if the lease is proposed to terminate during the term of the loan. The lessor will provide the Agency a mortgage on the real estate as security for the loan; and

(ii) For a loan made under § 764.351(a)(2) or (b), must be the operator of the farm at the time of the disaster.

(4) In the case of an entity:

(i) If the owners holding a majority interest in the entity applicant are related by blood or marriage, at least one of such related owners must operate the farm; or

(ii) If the owners holding a majority interest in the entity applicant are not related by blood or marriage, the majority interest holders must all operate the farm; and

(iii) If the entity applicant has an owner-operator or operator interest in any other farming operation, that farming operation must not be larger than a family farm;

(5) Must demonstrate the intent to continue the farm operation after the designated or declared disaster;

(6) Must be unable to obtain sufficient credit elsewhere at reasonable rates and terms. To establish this, the applicant must obtain written declinations of credit, specifying the reasons for declination, from legally organized

commercial lending institutions within reasonable proximity of the applicant as follows:

(i) In the case of a loan in excess of $300,000, two written declinations of credit are required;

(ii) In the case of a loan of less than $300,000, one written declination of credit is required; and

(iii) In the case of a loan of $100,000 or less, the Agency may waive the requirement for obtaining a written declination of credit, if the Agency determines that it would pose an undue burden on the applicant, the applicant certifies that they cannot get credit elsewhere, and based on the applicant's circumstances credit is not likely to be available;

(7) And any entity member must not have received debt forgiveness from the Agency on more than one occasion before April 4, 1996, or any time on or after April 4, 1996.

(b) *Additional EM loan eligibility requirements.* (1) An EM loan application must be received by the Agency not later than eight months after the date the designated or declared disaster occurred in the county of the applicant's farming operation.

(2) For production loss loans, an applicant must have a disaster yield that is at least 30 percent below the normal production yield of the crop, as determined by the Agency, that comprises a basic part of an applicant's total farming operation.

(3) For physical loss loans, an applicant must have suffered disaster-related damage to chattel or real estate essential to the farming operation, or to household items that must be repaired or replaced.

(4) If the ownership structure of a family farm changes between the time of a qualifying loss and the time an EM loan is closed, all of the following requirements must be met:

(i) The applicant, in the new form, including all owners must meet all of the eligibility requirements;

(ii) The new individual applicant, or all owners of a new entity applicant, must have had an ownership interest in the farming operation at the time of the disaster; and

(iii) The amount of the loan will be based on the percentage of the former farming operation transferred to the new applicant and in no event will the individual portions aggregated equal more than would have been authorized for the former farming operation.

§ 764.353 Limitations.

(a) EM loans must comply with the general limitations established at § 764.102.

(b) EM loans may not exceed the lesser of:

(1) The amount of credit necessary to restore the farming operation to its pre-disaster condition;

(2) In the case of a physical loss loan, the total eligible physical losses caused by the disaster; or

(3) In the case of a production loss loan, 100 percent of the total actual production loss sustained by the applicant as calculated in paragraph (d) of this section.

(c) For production loss loans, the applicant's actual crop production loss will be calculated as follows:

(1) Subtract the disaster yield from the normal yield to determine the per acre production loss;

(2) Multiply the per acre production loss by the number of acres of the farming operation devoted to the crop to determine the volume of the production loss;

(3) Multiply the volume of the production loss by the market price for such crop as determined by the Agency to determine the dollar value for the production loss; and

(4) Subtract any other disaster related compensation received by the applicant for the production loss.

(d) For a physical loss loan, the applicant's total eligible physical losses will be calculated as follows:

(1) Add the allowable costs associated with replacing or repairing chattel covered by hazard insurance (excluding labor, machinery, equipment, or materials contributed by the applicant to repair or replace chattel);

(2) Add the allowable costs associated with repairing or replacing real estate, covered by hazard insurance;

(3) Add the value of replacement livestock for which the applicant provided:

(i) Written documentation of inventory on hand immediately preceding the loss;

(ii) Records of livestock product sales sufficient to allow the Agency to establish a value;

(4) Add the allowable costs to restore perennials to the stage of development the damaged perennials had obtained prior to the disaster;

(5) Add, in the case of an individual applicant, the allowable costs associated with repairing or replacing essential household contents, not to exceed $20,000; and

(6) Subtract any other disaster related compensation received by the applicant for the loss or damage to the chattel or real estate.

(e) EM loan funds may not be used for physical loss purposes unless that physical property was covered by general hazard insurance at the time that the damage caused by the natural disaster occurred. The level of the coverage in effect at the time of the disaster must have been the tax or cost depreciated value, whichever is less. Chattel property must have been covered at the tax or cost depreciated value, whichever is less, when such insurance was readily available and the benefit of the coverage was greater than the cost of the insurance.

(f) EM loan funds may not be used to refinance consumer debt, such as automobile loans, or credit card debt unless such credit card debt is directly attributable to the farming operation.

§ 764.354 Rates and terms.

(a) *Rates.* The interest rate is the Agency's Emergency Loan Actual Loss rate, available in each Agency office.

(b) *Terms.* (1) The Agency schedules repayment of EM loans based on the useful life of the loan security, the applicant's repayment ability, and the type of loss.

(2) The repayment schedule must include at least one payment every year.

(3) EM loans for annual operating expenses must be repaid within 12 months. The Agency may extend this term to not more than 18 months to accommodate the production cycle of the agricultural commodities.

(4) EM loans for production losses or physical losses to chattel (including but not limited to assets with an expected life between one and seven years) may not exceed seven years. The Agency may extend this term up to a total length not to exceed 20 years, if necessary to improve the applicant's repayment ability and real estate security is available.

(5) The repayment schedule for EM loans for physical losses to real estate is based on the applicant's repayment ability and the useful life of the security, but in no case will the term exceed 40 years.

§ 764.355 Security requirements.

(a) EM loans made under § 764.351(a)(1) must comply with the general security requirements established at §§ 764.103, 764.104 and 764.155(b).

(b) EM loans made under § 764.351(a)(2) and (b) must comply with the general security requirements established at §§ 764.103, 764.104 and 764.255(b).

(c) When adequate security is not available because of the disaster, the loan may be approved if the Agency determines, based on an otherwise feasible plan, there is a reasonable

assurance that the applicant has the ability to repay the loan provided:

(1) The applicant has pledged as security for the loan, all available personal and business security, except as provided in § 764.106;

(2) The farm plan, approved by the Agency, indicates the loan will be repaid based upon the applicant's production and income history; addresses applicable pricing risks through the use of marketing contracts, hedging, or options and includes a marketing plan or similar risk management practice; and

(3) The applicant has had positive net cash farm income in at least 3 of the past 5 years.

(d) For loans over $25,000, title clearance is required when real estate is taken as security.

(e) For loans of $25,000 or less, when real estate is taken as security, a certification of ownership in real estate is required. Certification of ownership may be in the form of an affidavit which is signed by the applicant, names the record owner of the real estate in question and lists the balances due on all known debts against the real estate. Whenever the loan approving official is uncertain of the record owner or debts against the real estate security, a title search is required.

§ 764.356 Appraisal and valuation requirements.

(a) In the case of physical losses associated with livestock, the applicant must have written documentation of the inventory of livestock and records of livestock product sales sufficient to allow the Agency to value such livestock or livestock products just prior to the loss.

(b) In the case of farm assets damaged by the disaster, the value of such security shall be established as of the day before the disaster occurred.

§§ 764.357–764.400 [Reserved]

Subpart I—Loan Decision and Closing

§ 764.401 Loan decision.

(a) *Loan approval.* (1) The Agency will approve a loan only if it determines that:

(i) The applicant's operating plan reflects a feasible plan, which includes repayment of the proposed loan and demonstrates that all other credit needs can be met;

(ii) The proposed use of loan funds is authorized for the type of loan requested;

(iii) The applicant has been determined eligible for the type of loan requested;

(iv) All security requirements for the type of loan requested have been, or will be met before the loan is closed;

(v) The applicant's total indebtedness to the Agency, including the proposed loan, will not exceed the maximum limits established in § 761.8 of this chapter;

(vi) There have been no significant changes in the plan of operation or the applicant's financial condition since the time the Agency received a complete application; and

(vii) All other pertinent requirements have been, or will be met before the loan is closed.

(2) The Agency will place conditions upon loan approval it determines necessary to protect its interest and maximize the applicant's potential for success.

(b) *Loan denial.* The Agency will not approve a loan if it determines that:

(1) The applicant's operating plan does not reflect a feasible plan;

(2) The proposed use of loan funds is not authorized for the type of loan requested;

(3) The applicant does not meet the eligibility requirements for the type of loan requested;

(4) There is inadequate security for the type of loan requested;

(5) Approval of the loan would cause the applicant's total indebtedness to the Agency to exceed the maximum limits established in § 761.8;

(6) The applicant's circumstances may not permit continuous operation and management of the farm; or

(7) The applicant, the applicant's operation, or other circumstances surrounding the loan are inconsistent with the authorizing statutes, other Federal laws, or Federal credit policies.

(c) *Overturn of an Agency decision by appeal.* If an Agency loan denial is overturned on administrative appeal, the Agency will not automatically approve the loan. Unless prohibited by the final appeal determination, the Agency will:

(1) Request current financial information from the applicant as necessary to determine whether any changes in the applicant's financial condition or agricultural conditions which occurred after the Agency's adverse decision was made will adversely affect the applicant's operation;

(2) Approve a loan for crop production only if the Agency can determine that the applicant will be able to produce a crop in the production cycle for which the loan is requested;

(3) The applicant's operating plan, as modified based on the appeal decision, reflects a feasible plan, which includes repayment of the proposed loan and demonstrates that all other credit needs can be met.

§ 764.402 Loan closing.

(a) *General.* (1) Signatures on loan documents are required as follows:

(i) For individual applicants, only the applicant is required to sign the promissory note.

(ii) For entity applicants, the promissory note will be executed to evidence the liability of the entity and the individual liability of all members of the entity.

(iii) Despite minority status, a youth executing a promissory note for a Youth loan will incur full personal liability for the debt.

(iv) A cosigner will be required to sign the promissory note only when the applicant cannot meet the repayment requirements for the loan requested.

(v) All signatures needed for the Agency to acquire the required security interests will be obtained according to State law.

(2) Loan funds will be made available to the applicant within 15 days of loan approval, subject to the availability of funding.

(3) If the loan is not closed within 90 days of loan approval or if the applicant's financial condition changes significantly, the Agency must reconfirm the requirements for loan approval prior to loan closing. The applicant may be required to provide updated information in order for the Agency to reconfirm approval and proceed with loan closing.

(b) *Real estate-secured loans.* The Agency will close a real estate loan only when it determines that the Agency requirements for the loan have been satisfied and when the closing agent can issue a policy of title insurance or final title opinion as of the date of closing. The title insurance or final title opinion must show title vested as required by the Agency, the lien of the Agency's security instrument in the priority required by the Agency, and title to the security property, subject only to those exceptions approved in writing by the Agency.

(1) The Agency must approve agents who will close Agency loans. In order to be approved, closing agents must meet all of the following requirements to the Agency's satisfaction:

(i) Be licensed in the state where the loan will be closed;

(ii) Not be debarred or suspended from participating in any Federal programs;

(iii) Maintain liability insurance;

(iv) Have a fidelity bond which covers all employees with access to loan funds;

(v) Have current knowledge of the requirements of State law in connection with the loan closing and title clearance;

(vi) Not represent both the buyer and seller in the transaction;

(vii) Not be related as a family member or business associate with the applicant; and

(viii) Act promptly to provide required services.

(2) Except as provided in § 764.355 for EM loans, title clearance and legal services are required for all loans and may be completed by the Agency or an approved agent. This requirement may be waived:

(i) For loans of $10,000 or less;

(ii) When the real estate is considered additional security by the Agency; or

(iii) When the real estate is a non-essential asset.

(c) *Chattel-secured loans.* The following requirements apply to loans secured by chattel:

(1) The Agency will not close a loan secured by chattels until it is satisfied that the loan has been secured;

(2) The Agency requires a financing statement for every loan except when a filed financing statement covering the applicant's property is still effective, covers all types of chattel property that will serve as security for the loan, describes the land on which crops and fixtures are or will be located, and complies with the law of the jurisdiction where filed;

(3) The Agency requires a new security agreement for all new loans prior to the disbursement of loan funds.

(d) *Payment of fees.* The applicant, or in the case of a real estate purchase, the applicant and seller, must pay all filing, recording, notary, lien search, and any other fees necessary to process and close a loan.

(e) *Disbursement of funds.* The Agency or closing agent will be responsible for disbursing loan funds. The Agency may require a supervised bank account in accordance with subpart B of part 761 of this chapter or disburse funds directly to the applicant.

§§ 764.403–764.450 [Reserved]

Subpart J—Borrower Training and Training Vendor Requirements

§ 764.451 Purpose.

The purpose of production and financial management training is to help a direct loan borrower develop and improve skills necessary to:

(a) Successfully operate a farm;

(b) Build equity in the farm business; and

(c) Become financially successful and prepared to graduate from Agency financing to commercial sources of credit.

§ 764.452 Borrower training requirements.

(a) The Agency will require a loan applicant to agree to complete production and financial management training, unless the Agency provides a waiver in accordance with § 764.453, or the borrower has previously satisfied the training requirements. In the case of an entity borrower:

(1) The Agency will require any individual member holding a majority interest in the entity or who is operating the farm to complete training on behalf of the entity, except as provided in paragraph (a)(2) of this section;

(2) If one entity member is solely responsible for financial or production management, then only that member will be required to complete training.

(b) When the Agency determines that production training is required, a borrower must agree to complete course work covering production management in each crop or livestock enterprise that the Agency determines necessary.

(c) When the Agency determines that financial management training is required, a borrower must agree to complete course work covering all aspects of farm accounting and integrating accounting elements into a financial management system.

(d) The Agency will require a borrower who applies for a loan to finance a new enterprise, such as a new crop or a new type of livestock, to agree to complete production training with regard to that enterprise, even if production training requirements were waived or satisfied under a previous loan request, unless the Agency provides a waiver in accordance with § 764.453.

(e) If a waiver is granted, the Agency will require borrower training as a condition for future loans if Agency supervision provided in 7 CFR 761 subpart C, reflects that such training is needed.

(f) The Agency cannot reject a request for a direct loan based solely on a loan applicant's or borrower's need for training.

(g) Any notification of required training or waiver of training must be in writing.

§ 764.453 Agency waiver of training requirements.

(a) The applicant must request the waiver in writing.

(b) The Agency will grant a waiver for training in production, financial management, or both, under the following conditions:

(1) The applicant submits evidence of successful completion of a course similar to a course approved under section § 764.457 and additional training is not needed; or

(2) The applicant submits evidence which demonstrates to the Agency's satisfaction the experience and training necessary for a successful and efficient operation.

(c) If the production and financial functions of the farming operation are shared among individuals, the Agency will consider the collective knowledge and skills of the individuals when determining whether to waive training requirements.

§ 764.454 Actions that a borrower must take when training is required.

(a) *Deadline for completion of training.* (1) If the Agency requires a borrower to complete training, at loan closing the borrower must agree in writing to complete all required training within two years.

(2) The Agency will grant a one-year extension to complete training if the borrower is unable to complete training within the two-year period due to circumstances beyond the borrower's control.

(3) The Agency will grant an extension longer than one year for extraordinary circumstances as determined by the Agency.

(4) A borrower who does not complete the required training within the specified time period will be ineligible for additional direct FLP loans.

(b) *Arranging training with a vendor.* The borrower must select and contact an Agency approved vendor and make all arrangements to begin training.

(c) *Payment of training fees.* (1) A borrower is responsible for the cost of training and must include training fees in the farm operating plan as a farm operating expense.

(2) A borrower's payment of training fees is an authorized use of OL funds.

(3) The Agency is not a party to fee or other agreements between the borrower and vendor.

(d) *Borrower evaluation of a vendor.* Upon completion of the required training, the borrower will complete an evaluation of the course and submit it to the vendor. The vendor will forward completed evaluation forms to the Agency for consideration.

§ 764.455 Potential training vendors.

The Agency will contract for training services with State or private providers of production and financial management training services.

§ 764.456 Applying to be a vendor.

(a) A vendor for borrower training services must apply to the Agency for approval.

(b) The vendor application must include:

(1) A sample of the course materials and a description of the vendor's training methods;

(2) Specific training objectives for each section of the course;

(3) A detailed course agenda specifying the topics to be covered, the time devoted to each topic, and the number of sessions to be attended;

(4) A list of instructors and their qualifications;

(5) The criteria by which additional instructors will be selected;

(6) The proposed locations where training will take place;

(7) The cost per participant and the cost per organization;

(8) The minimum and maximum class size;

(9) A description of the vendor's experience in developing and administering training to farmers;

(10) A description of the monitoring and quality control methods the vendor will use;

(11) A description of the policy on allowing Agency employees to attend the course for monitoring purposes;

(12) A description of how the needs of borrowers with physical or mental disabilities or learning disabilities will be met; and

(13) A plan of how the needs of borrowers who do not speak English as their primary language will be met.

§ 764.457 Vendor requirements.

Vendors must meet the following requirements.

(a) *Minimum experience.* The vendor must demonstrate a minimum of three years of experience in conducting training courses or teaching the subject matter.

(b) *Training objectives.* The courses provided by a vendor must enable the borrower to accomplish one or more of the following objectives:

(1) Describe the specific goals of the business, any changes required to attain the goals, and outline how these changes will occur using present and projected business budgets;

(2) Maintain and use a financial management information system to make financial decisions;

(3) Understand and use an income statement;

(4) Understand and use a balance sheet;

(5) Understand and use a cash flow budget; and

(6) Use production records and other production information to identify problems, evaluate alternatives, and correct current production practices to improve efficiency and profitability.

(c) *Curriculum.* At least one of the following subjects must be covered:

(1) Business planning courses, covering general goal setting, risk management, and planning.

(2) Financial management courses, covering all aspects of farm accounting and focusing on integrating accounting elements into a financial management system.

(3) Crop and livestock production courses focusing on improving the profitability of the farm.

(d) *Instructor qualifications.* All instructors must have:

(1) Sufficient knowledge of the material and experience in adult education;

(2) A bachelor's degree or comparable experience in the subject area to be taught; and

(3) A minimum of three years experience in conducting training courses or teaching.

§ 764.458 Vendor approval.

(a) *Agreement to conduct training.* (1) Upon approval, the vendor must sign an agreement to conduct training for the Agency's borrowers.

(2) The agreement to conduct training is valid for three years.

(3) Any changes in curriculum, instructor, or cost require prior approval by the Agency.

(4) The vendor may revoke the agreement by giving a written 30-day notice.

(5) The Agency may revoke the agreement if the vendor does not comply with the responsibilities listed in the agreement by giving a written 30-day notice.

(b) *Renewal of agreement to conduct training.* (1) To renew an agreement to conduct training, a vendor must submit in writing to the Agency:

(i) A request to renew the agreement;

(ii) Any changes in curricula, instructor, or cost; and

(iii) Documentation that the vendor is providing effective training.

(2) The Agency will review renewal requests in accordance with § 764.457.

§ 764.459 Evaluation of borrower progress.

(a) The vendor must provide the Agency with a periodic progress report for each borrower enrolled in training in accordance with the agreement to complete training. The reports will indicate whether the borrower is attending sessions, completing the training program, and demonstrating an understanding of the course material.

(b) Upon borrower completion of the training, the vendor must provide the Agency with an evaluation of the borrower's knowledge of the course material and assign a score. The following table lists the possible scores, the criteria used to assign each score, and Agency consideration of each score:

Score	Criteria used to determine score	Agency consideration
1	If the borrower: • Attended classroom sessions as agreed, • Satisfactorily completed all assignments, and • Demonstrated an understanding of the course material.	Training requirement associated with course is complete.
2	If the borrower: • Attended classroom sessions as agreed, and • Attempted to complete all assignments, but • Does not demonstrate an understanding of the course material.	Training requirement associated with course is complete. Additional Agency supervision may be necessary.
3	If the borrower did not: • Attend classroom sessions as agreed, or • Attempt to complete assignments, or • Otherwise make a good faith effort to complete the training.	Training requirement associated with course is not complete. The borrower is ineligible for future direct loans.

§§ 764.460–764.500 [Reserved]

13. Add part 765 to read as follows:

PART 765—DIRECT LOAN SERVICING—REGULAR

Sec.

Subpart A—Overview

765.1 Introduction to Direct Loan Servicing—Regular.
765.2 Abbreviations and definitions.

765.3–765.50 [Reserved]

Subpart B—Borrowers with Limited Resource Interest Rate Loans

765.51 Annual review.
765.52–765.100 [Reserved]

Subpart C—Borrower Graduation

765.101 Borrower graduation requirements.
765.102 Borrower noncompliance with graduation requirements.
765.103–765.150 [Reserved]

Subpart D—Borrower Payments

765.151 Handling payments.
765.152 Types of payments.
765.153 Application of payments.
765.154 Distribution of payments.
765.155 Final loan payments.
765.156–765.200 [Reserved]

Subpart E—Protecting the Agency's Security Interest

765.201 General policy.
765.202 Borrower responsibilities.
765.203 Protective advances.
765.204 Notifying potential purchasers.
765.205 Subordination of liens.
765.206 Junior liens.
765.207 Conditions for severance agreements.
765.208–765.250 [Reserved]

Subpart F—Required Use and Operation of Agency Security

765.251 General.
765.252 Lease of security.
765.253 Operating security.
765.254–765.300 [Reserved]

Subpart G—Disposal of Chattel Security

765.301 General.
765.302 Use and maintenance of agreement of use of proceeds.
765.303 Use of proceeds from chattel security.
765.304 Unapproved disposition.
765.305 Release of security interest.
765.306–765.350 [Reserved]

Subpart H—Partial Release of Real Estate Security

765.351 Requirements to obtain Agency consent.
765.352 Use of proceeds.
765.353 Determining market value.
765.354–765.400 [Reserved]

Subpart I—Transfer of Security and Assumption of Debt

765.401 Conditions for transfer of real estate and chattel security.
765.402 Transfer of security and loan assumption on same rates and terms.
765.403 Transfer of security to and assumption of debt by eligible borrowers.
765.404 Transfer of security to and assumption of debt by ineligible borrowers.
765.405 Payment of costs associated with transfers.
765.406 Release of transferor from liability.
765.407–765.450 [Reserved]

Subpart J—Deceased Borrowers

765.451 Continuation of FLP debt and transfer of security.
765.452 Borrowers with Non-program loans.
765.453–765.500 [Reserved]

Subpart K—Exception Authority

765.501 Agency exception authority.
765.502–765.550 [Reserved]

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A—Overview

§ 765.1 Introduction to Direct Loan Servicing—Regular.

(a) *Purpose.* This part describes the general policies for servicing FLP direct loans, except for borrowers who are delinquent, financially distressed, or otherwise in default on their loan.

(b) *Servicing actions described in this part.* Servicing actions described in this part include:

(1) Limited resource reviews;

(2) Graduation to commercial credit;

(3) Application of payments;

(4) Maintaining and disposing of security;

(5) Transfer of security and assumption of debt; and

(6) Servicing accounts of deceased borrowers.

(c) *Loans covered.* The Agency services FLP direct loans under the policies contained in this part. This part is not applicable to Non-program loans, except where noted.

§ 765.2 Abbreviations and definitions.

Abbreviations and definitions for terms used in this part are provided in § 761.2 of this chapter.

§§ 765.3—765.50 [Reserved]

Subpart B—Borrower With Limited Resource Interest Rate Loans

§ 765.51 Annual review.

(a) A borrower with limited resource interest rate loans is required to provide the Agency annually the operation's financial information to determine if the borrower can afford to pay a higher interest rate on the loan. The Agency will review the information in accordance with § 761.104 of this chapter.

(b) If the borrower's operating plan shows that the debt service margin exceeds 110 percent, the Agency will increase the interest rate on the loans with limited resource interest rate until:

(1) A further increase in the interest rate results in a debt service margin of less than 110 percent; or

(2) The interest rate is equal to the interest rate currently in effect for the type of loan.

(c) Except as provided in paragraph (d) of this section, the Agency will increase the limited resource interest rate to the current interest rate for the type of loan, if the borrower:

(1) Purchases items not planned during the term of the loan;

(2) Refuses to submit information the Agency requests for use in reviewing the borrower's financial condition; or

(3) Ceases farming, as described in § 765.253.

(d) If the borrower has limited resource interest rate loans that are deferred, the Agency will not increase the interest rate pursuant to paragraph (b) of this section during the deferral period, except under paragraph (c) of this section.

§§ 765.52–765.100 [Reserved]

Subpart C—Borrower Graduation

§ 765.101 Borrower graduation requirements.

(a) In accordance with the promissory note and security instruments, the borrower must graduate to another source of credit if the Agency determines that:

(1) The borrower has the ability to obtain credit from other sources; and

(2) Adequate credit is available from other sources at reasonable rates and terms.

(b) The Agency may require partial or full graduation.

(1) In a partial graduation, all FLP loans of one type (*i.e.* all chattel loans or all real estate loans) must be paid in full by refinancing with other credit with or without an Agency guarantee.

(2) In a full graduation, all FLP loans are paid in full by refinancing with other credit with or without an Agency guarantee.

(3) A loan made for chattel and real estate purposes will be categorized according to how the majority of the loan's funds are expended.

(c) The borrower must submit all information that the Agency requests in conjunction with the review of the borrower's financial condition in accordance with § 761.102.

(d) The Agency may provide a borrower's prospectus to lenders in an attempt to identify sources of non-Agency credit and assess the lenders' interest in refinancing the borrower's loan.

(e) If a lender expresses an interest in refinancing the borrower's FLP loan, the borrower must:

(1) Apply for a loan from the interested lender within 30 days of notice; or

(2) Seek guaranteed loan assistance under the market placement program in accordance with § 762.110(g) of this chapter.

(f) The borrower will be responsible for any application fees or purchase of stock in conjunction with graduation.

§ 765.102 Borrower noncompliance with graduation requirements.

Borrower failure to fulfill all graduation requirements within the time period specified by the Agency constitutes default on the loan. The Agency will accelerate the borrower's loan without offering servicing options provided under 7 CFR 766.

§§ 765.103–765.150 [Reserved]

Subpart D—Borrower Payments

§ 765.151 Handling payments.

(a) *Borrower payments.* Borrowers must submit their loan payments in a form acceptable to the Agency, such as checks, cash, and money orders. Forms of payment not acceptable to the Agency include, but are not limited to, foreign currency, foreign checks, and sight drafts.

(b) *Crediting account.* The Agency credits a borrower's account as of the date the Agency receives payment.

§ 765.152 Types of payments.

(a) *Regular payments.* Regular payments are derived from, but are not limited to:

(1) The sale of normal income security;

(2) The sale of farm products;

(3) Lease income, including mineral lease signing bonus;

(4) Program or disaster-related disbursements from USDA or crop insurance entities; and

(5) Non-farm income.

(b) *Extra payments.* Extra payments are derived from any of the following:

(1) Sale of chattel security other than normal income security;

(2) Sale of real estate security;

(3) Refinancing of Agency debt;

(4) Cash proceeds of insurance claims received on Agency collateral, if not being used to repair or replace security items;

(5) Any transaction that results in a loss in the value of any Agency basic security;

(6) Refunds of duplicate disaster program benefits to be applied on an EM loan; or

(7) Refunds of unused loan funds.

(c) *Payments from sale of real estate.* Notwithstanding any other provision of this section, payments derived from the sale of real estate security will be treated as regular payments at the Agency's discretion, if the Agency loans will be adequately secured after the transaction.

§ 765.153 Application of payments.

(a) *Regular payments.* A regular payment is credited to a scheduled installment on Agency FLP direct and Non-program loans. Regular payments are applied to FLP loans in the following order:

(1) Annual operating loan;

(2) Delinquent FLP installments, paying FLP least secured loans first;

(3) Non-delinquent FLP installments due in the current operating cycle in order of security priority, paying least secured loans first;

(4) Any future installments due.

(b) *Extra payments.* An extra payment is not credited to a scheduled installment and does not relieve the borrower's responsibility to make scheduled loan installments, but will reduce the borrower's FLP indebtedness. Extra payments are applied to FLP loans in order of lien priority.

§ 765.154 Distribution of payments.

The Agency applies both regular and extra payments to each loan in the following order, as applicable:

(a) Administrative costs and protective advances plus interest;

(b) Deferred non-capitalized interest;

(c) Accrued deferred interest;

(d) Interest accrued to date of payment; and

(e) Loan principal.

§ 765.155 Final loan payments.

(a) *General.* (1) If the borrower makes a final payment by one of the following methods, the Agency may release the borrower's security instruments at the time payment is made, unless the Agency has reservations regarding the validity of the payment:

(i) Cash;

(ii) U.S. Treasury check;

(iii) Cashier's check; or

(iv) Certified check.

(2) Security instruments will only be released when all loans secured by the instrument have been paid in full or otherwise satisfied.

(3) The Agency will return the paid note and satisfied security instruments to the borrower after the Agency processes the final payment and determines that the total indebtedness is paid in full.

(b) *Borrower refunds.* If the borrower refunds the entire loan after the loan is closed, the borrower must pay interest from the date of the note to the date the Agency received the funds.

(c) *Overpayments.* If an Agency miscalculation of a final payment results in an overpayment by the borrower of less than $10, the borrower must request a refund from the Agency in writing. Overpayments of $10 or more automatically will be refunded by the Agency.

(d) *Underpayments.* If an Agency miscalculation of a final payment amount results in an underpayment, the Agency attempts to collect all account balances resulting from its error unless the outstanding balance is less than $10.

(1) The Agency may initiate court proceedings to collect the balance of a loan if it exceeds $1,000 and the Agency believes that the borrower has recoverable assets.

(2) If the Agency cannot collect an underpayment from the borrower, the Agency attempts to settle the debt in accordance with 7 CFR 792.

§§ 765.156–765.200 [Reserved]

Subpart E—Protecting the Agency's Security Interest

§ 765.201 General policy.

All Agency servicing actions regarding preservation and protection of Agency loan security will be consistent with the covenants and agreements contained in all the borrower debt and loan security instruments.

§ 765.202 Borrower responsibilities.

The borrower must:

(a) Comply with all provisions of the loan documents;

(1) Non-compliance with loan provisions, aside from borrower failure to meet scheduled loan repayment installments contained in the promissory note, constitutes non-monetary default of FLP loans by the borrower;

(2) Borrower failure to keep agreements will be considered by the Agency when making eligibility determinations for future requests for assistance and may adversely impact such requests;

(b) Maintain, protect, and account for all loan security;

(c) Pay the following, unless State law requires the Agency to pay:

(1) Fees for executing, filing or recording financing statements, continuation statements or other security instruments; and

(2) The cost of lien search reports;

(d) Pay taxes on property securing FLP loans when they become due;

(e) Maintain insurance coverage in an amount specified by the Agency;

(f) Protect the interests of the Government when a third party brings suit or takes other action that could affect Agency security.

§ 765.203 Protective advances.

When necessary to protect the Agency's security interest, costs incurred for the following actions will be charged to the borrower's account:

(a) Maintain abandoned security property;

(b) Preserve inadequately maintained security;

(c) Pay real estate taxes and assessments;

(d) Pay property, hazard, or flood insurance;

(e) Pay harvesting costs;

(f) Maintain Agency security instruments;

(g) Pay ground rents;

(h) Pay expenses for emergency measures to protect the Agency's collateral; and

(i) Protect the Agency from actions by third parties.

§ 765.204 Notifying potential purchasers.

(a) *States with a Central Filing System (CFS).* The Agency participates and complies with central filing operations in States where CFS have been organized. In a State with a CFS, the Agency is not required to additionally notify potential purchasers that the Agency has a lien on a borrower's chattel security, unless specifically required by State law.

(b) *States without a CFS.* In a State without a CFS, the Agency follows the filing requirements specified for perfecting a lien on a borrower's chattel security under State law. The Agency will distribute the list of chattel and crop borrowers to sale barns, warehouses, and other businesses that buy or sell chattels or crops. In addition, the Agency may provide the list of borrowers to potential purchasers upon request.

§ 765.205 Subordination of liens.

(a) *Real estate security.* For loans secured by real estate, the Agency will approve a request for subordination if all of the following conditions are met:

(1) The borrower is not in default or will not be in default on Agency FLP loans by the time the subordination closing is complete;

(2) The loan will be used for an authorized Agency loan purpose or is made in conjunction with a guaranteed loan;

(3) The credit is essential to the operation and the borrower cannot obtain the credit without a subordination;

(4) The borrower can demonstrate, through a current farm operating plan, the ability to repay all debt payments scheduled, and to be scheduled, during the operating cycle;

(5) The Agency loan is still adequately secured after the subordination, or the value of the loan security will be increased by an amount at least equal to the advance to be made under the subordination;

(6) The borrower is not able to graduate;

(7) If the borrower is an entity and the Agency has taken real estate as additional security on property owned by a member, a subordination for any authorized Agency loan purpose may be approved when it is needed for the entity member to finance a separate operation, provided the subordination does not cause the unpaid principal and interest on the Agency loans to exceed the value of loan security or otherwise adversely affect the security;

(8) The borrower has not been convicted under Federal or state law, within the last five crop years, of planting, cultivating, growing, producing, harvesting, or storing a controlled substance, as defined at 21 CFR part 1308;

(9) The borrower will not use loan funds in a way that will contribute to erosion of highly erodible land or conversion of wetlands to produce agricultural commodities as described in 7 CFR part 799;

(10) There is no other subordination outstanding in connection with the same security;

(11) The subordination is limited to a specific amount and the loan made in conjunction with the subordination will be closed within a reasonable time;

(12) In the case of real property purchase or exchange, the Agency will obtain a valid mortgage and the required lien position on the real property. The Agency will require title clearance and loan closing for the property in compliance with § 764.402 of this chapter;

(13) Any planned development of real estate security will be performed as directed by the creditor, approved by the Agency, and will comply with the terms and conditions of § 761.10 of this chapter;

(14) Subordinations of SAA mortgages may only be approved when there is no increase in the debt which is prior to the SAA debt; and

(15) If a borrower has only a Non-program loan, the Agency does not permit subordination. The Agency may subordinate Non-program security when it is also security for a program loan with the same borrower.

(b) *Chattel security.* (1) For loans secured by chattel, the subordination must meet conditions contained in paragraphs (a)(1) through (11) of this section.

(2) The Agency will approve a request for a second subordination to enable a borrower to obtain crop insurance, if the following conditions are met:

(i) The creditor to whom the first subordination was given did not provide for payment of the current year's crop insurance premium, and consents in writing to the provisions of the second subordination to pay insurance premiums from the crop or insurance proceeds;

(ii) The borrower assigns the insurance proceeds to the Agency or names the Agency in the loss payable clause of the policy; and

(iii) The subordination meets the conditions under paragraphs (a)(1) through (11) of this section.

(c) *Appraisals.* An appraisal of the property that secures the Agency loan will be required when the Agency determines it necessary to protect its interest. Appraisals will be obtained in accordance with § 761.7 of this chapter.

§ 765.206 Junior liens.

(a) *General policy.* The borrower will not give a lien on Agency security without the consent of the Agency. Failure to obtain Agency consent will be considered by the Agency when making eligibility determinations for future requests for assistance and may adversely impact such requests.

(b) *Conditions for consent.* The Agency will consent to the terms of a junior lien if all of the following conditions are met:

(1) The borrower's ability to make scheduled loan payments is not jeopardized;

(2) The borrower provides the Agency a copy of the operating plans submitted to the junior lienholder, and the plans are consistent with the Agency operating plan;

(3) The total debt against the security does not exceed the security's market value;

(4) The junior lienholder agrees in writing not to foreclose the security instrument unless written notice is provided to the Agency;

(5) The borrower is unable to graduate; and

(6) The junior lien will not otherwise adversely impact the Agency's financial interests.

§ 765.207 Conditions for severance agreements.

For loans secured by real estate, a borrower may request Agency consent to a severance agreement or similar instrument so that future chattel acquired by the borrower will not become part of the real estate securing the Agency debt. The Agency will consent to severance agreements if all of the following conditions are met:

(a) The financing arrangements are in the best financial interest of the Agency and the borrower;

(b) The transaction will not adversely affect the Agency's security position;

(c) The borrower is unable to graduate;

(d) The transaction will not jeopardize the borrower's ability to pay all

outstanding debts to the Agency and other creditors; and

(e) The property acquired is consistent with authorized loan purposes.

§§ 765.208–765.250 [Reserved]

Subpart F—Required Use and Operation of Agency Security

§ 765.251 General.

(a) A borrower is required to be the operator of Agency security in accordance with loan purposes and agreements contained in the provisions of loan security instruments.

(b) A borrower who fails to operate the security without Agency consent is in violation of loan and security agreements.

(c) The Agency will consider a borrower's request to lease or cease to operate the security as provided in §§ 765.252 and 765.253.

§ 765.252 Lease of security.

(a) *Real estate leases.* The borrower may lease real estate security provided the following conditions are met:

(1) The Agency approves the borrower's request to lease;

(2) The term of consecutive leases does not exceed three years;

(3) The lease does not contain an option to purchase; and

(4) The requirements of § 765.253 have been met.

(b) *Mineral leases.* The borrower must request Agency consent to lease any mineral rights used as security for Agency loans.

(1) For loans secured by real estate before December 23, 1985, the Agency has a security interest in any mineral rights the borrower has on the real estate pledged as collateral.

(2) For loans secured by real estate on or after December 23, 1985, the Agency has a security interest in any mineral rights if the mineral rights were included in an appraisal.

(3) The Agency may consent to a mineral lease if the proposed use of the leased rights will not adversely affect either:

(i) The Agency's security interest; or

(ii) Compliance with any applicable environmental requirements of 7 CFR 799.

(c) *Lease of chattel security.* Lease of chattel security is not authorized.

(d) *Lease proceeds.* Lease proceeds are considered normal income security and may be used in accordance with § 765.303(b).

(e) *Lease of allotments.* (1) The Agency will not approve any crop allotment lease that will adversely affect its security interest.

(2) The borrower must assign all rental proceeds from an allotment lease to the Agency.

§ 765.253 Operating security.

If the borrower requests Agency consent to cease operating the security or if the Agency discovers that the borrower is failing to operate the security, the Agency will give consent if:

(a) Such action is in the Government's best interests;

(b) The borrower is unable to graduate;

(c) The borrower is involved in the day-to-day operational activities, management decisions, costs and returns of the operation, and will continue to reside in the immediate farming community for reasonable management and farm operation involvement;

(d) The borrower's failure to operate the farm is due to age or poor health, and the borrower continues to reside in the immediate farming community for reasonable management and farm operation involvement; or

(e) The borrower's failure to operate the real estate security is beyond the borrower's control, and the borrower will resume the operation within three years.

§§ 765.254–765.300 [Reserved]

Subpart G—Disposal of Chattel Security

§ 765.301 General.

(a) The borrower must account for all security.

(b) The borrower may not dispose of chattel security for an amount less than its market value. All proceeds, including any amount in excess of the market value, must be distributed to lienholders for application to the borrower's account in the order of lien priority.

(1) The Agency considers the market value of normal income security to be the prevailing market price of the commodity in the area in which the farm is located.

(2) The market value for basic security is determined by an appraisal obtained in accordance with § 761.7 of this chapter.

(c) When the borrower sells chattel security, the property and proceeds remain subject to the Agency lien until the lien is released by the Agency.

(d) The Agency and all other lienholders must provide written consent before a borrower may use proceeds for a purpose other than payment of lienholders in the order of lien priority.

(e) The transaction must not interfere with the borrower's operation or jeopardize the borrower's ability to repay the Agency loan.

(f) The disposition must enhance the program objectives of the Agency loan.

(g) When the borrower exchanges security property for other property or purchases new property with sale proceeds, the acquisition must be essential to the operation as well as meet the program objectives, purposes, and limitations for the type of loan.

(h) All checks, drafts, or money orders which the borrower receives from the sale of Agency security must be payable to the borrower and the Agency, unless all Agency loan installments, and any past due installments, for the period of the agreement for the use of proceeds have been paid.

§ 765.302 Use and maintenance of the agreement for the use of proceeds.

(a) The borrower and the Agency will execute an agreement for the use of proceeds for each production cycle, including proceeds from the sale of milk, crops on hand or in storage, planned proceeds from Government payments, crop insurance and insurance proceeds derived from the loss of security.

(b) The agreement for the use of proceeds will remain in effect until the proper disposition of all listed chattel security has been accomplished, or the remaining chattel security has been transferred to a new agreement for the use of proceeds.

(c) The borrower must report any disposition of basic or normal income security immediately to the Agency.

(d) If a borrower wants to dispose of chattel security not listed or in a way different than provided on the agreement for the use of proceeds, the borrower must obtain the Agency's consent before the disposition.

(e) If the borrower sells security to a purchaser not listed in the agreement for the use of proceeds, the borrower must immediately notify the Agency of what property has been sold and of the name and business address of the purchaser.

(f) The borrower must provide the Agency with the necessary information to update the operation's plan and the agreement for the use of proceeds in accordance with § 761.102 of this chapter.

(g) Changes to the agreement on the use of proceeds will be recorded, dated and initialed by the borrower and the Agency.

(h) The borrower must maintain records of dispositions of property and the actual use of proceeds. The borrower must make these records available to the

Agency at the end of the period covered by the agreement for the use of proceeds.

§ 765.303 Use of proceeds from chattel security.

(a) *General.* Proceeds from the sale of basic or normal income security may be used in accordance with the agreement for the use of proceeds as follows:

(1) Sales proceeds must be remitted to lienholders in order of lien priority.

(2) Proceeds will be applied to the Agency debt if there is no prior lienholder.

(3) Proceeds may be used to pay customary costs appropriate to the transaction.

(4) Security may be consumed as follows:

(i) Livestock may be used by the borrower's family for subsistence;

(ii) If crops serve as security and usually would be marketed, the Agency may allow such crops to be fed to livestock, if this is preferable to marketing, the Agency obtains a lien or assignment on the livestock, and livestock products, at least equal to the lien on the crops.

(5) Proceeds may be used to purchase property better suited to the borrower's needs if the Agency will acquire a lien on the purchased property. The value of the purchased property, together with any proceeds applied to the Agency debt, must at least equal the value of the Agency lien on the old security.

(6) Security may be exchanged for property better suited to the borrower's needs if the Agency will acquire a lien on the new property at least equal in value to the lien held on the property exchanged.

(b) *Additional uses of proceeds from the sale of normal income security.* (1) The agreement for the use of proceeds will allow for release of proceeds from the sale of normal income security to be used to pay essential family living and farm operating expenses. Such releases will be terminated when an account is accelerated.

(2) With the concurrence of all lienholders, proceeds may be used to preserve the security because of a natural disaster or other severe catastrophe, when funds cannot be obtained by other means or with an Agency loan in time to prevent the borrower and the Agency from suffering a substantial loss.

(c) *Basic security.* Proceeds from the sale of basic security may not be used for any family living and farm operating expenses.

§ 765.304 Unapproved disposition.

(a) If a borrower disposes of chattel security without Agency approval, or misuses proceeds, the borrower must:

(1) Make restitution to the Agency within 30 days of Agency notification; or

(2) Provide disposition or use information to enable the Agency to consider post-approval within 30 days of Agency notification.

(b) Failure to cure the first unauthorized disposition in accordance with paragraph (a) of this section, or a second unauthorized disposition, whether or not cured, will adversely impact future borrower eligibility for loans or loan servicing, and may result in civil or criminal action.

§ 765.305 Release of security interest.

(a) When Agency security is sold, exchanged, or consumed in accordance with the agreement for the use of proceeds, the Agency will release its security interest to the extent of the value of the security disposed.

(b) Security interests on wool and mohair may be released when the security is marketed by consignment, provided all of the following conditions are met:

(1) The borrower assigns to the Agency the proceeds of any advances made, or to be made, on the wool or mohair by the broker, less shipping, handling, processing, and marketing costs;

(2) The borrower assigns to the Agency the proceeds of the sale of the wool or mohair, less any remaining costs in shipping, handling, processing, and marketing, and less the amount of any advance (including any interest which may have accrued on the advance) made by the broker against the wool or mohair; and

(3) The borrower and broker agree that the net proceeds of any advances on, or sale of, the wool or mohair will be paid by checks made payable jointly to the borrower and the Agency.

§§ 765.306–765.350 [Reserved]

Subpart H—Partial Release of Real Estate Security

§ 765.351 Requirements to obtain Agency consent.

The borrower must obtain prior consent from the Agency for any transactions affecting the real estate security, including but not limited to, sale or exchange of security, a right-of-way across security, and a partial release. The Agency may consent to such transactions provided the conditions in this section are met.

(a) *General.* (1) The transaction will enhance the objectives for which the Agency loan or loans were made;

(2) The transaction will not jeopardize the borrower's ability to repay the Agency loan, or is necessary to place the borrower's operation on a sound basis;

(3) The amount received for the security being disposed of or the rights being granted is not less than the market value;

(4) Any proceeds in excess of the market value are remitted to lienholders in the order of lien priority;

(5) The transaction must not interfere with the borrower's operation;

(6) The market value of the remaining security is adequate to secure the Agency loans, or if the market value of the security before the transaction was inadequate to fully secure the Agency loans, the Agency's equity in the security is not diminished;

(7) The environmental requirements of 7 CFR 799 part must be met; and

(8) The borrower cannot graduate to other credit.

(b) *Sale of timber, gravel, oil, gas, coal, or other minerals.* (1) Agency lien instruments require that the borrower request and receive written consent from the Agency prior to certain transactions, including but not limited to, cutting, removal, or lease of timber, gravel, oil, gas, coal, or other minerals, except small amounts used by the borrower for ordinary household purposes.

(i) The sale of timber from real estate which secures an Agency loan will be considered a disposition of a portion of the security.

(ii) For loans secured by real estate before December 23, 1985, the Agency has a security interest in mineral products, gravel, oil, gas, coal, or other resources and the sale by unit or lump sum payment will be considered a disposition of security.

(iii) For loans secured by real estate on or after December 23, 1985, the Agency has a security interest in mineral products, gravel, oil, gas, coal, or other resources if the value of such products was included in an appraisal. When the Agency has a security interest, the sale of such products will be considered a disposition of a portion of the security.

(2) Any compensation the borrower may receive for damages to the surface of the real estate security resulting from exploration for, or recovery of, minerals must be assigned to the Agency. Such proceeds will be used to repair the damage and any remaining funds must be remitted to lienholders in the order of lien priority or, with all lienholders

consent, used for an authorized loan purpose.

(3) The disposition of security for an outstanding ST loan will only be authorized if the transaction will result in full repayment of the loan.

(c) *Exchange of security property.* When an exchange of security results in a balance owing to the borrower, the proceeds must be used in accordance with § 765.352.

Property acquired by the borrower must meet program objectives, purposes and limitations relating to the type of loan involved as well as applicable requirements for appraisal, title clearance and security.

(d) *Sale under contract for deed.* A borrower may sell a portion of the security for not less than its market value under a contract for deed subject to the following:

(1) Not less than 10 percent of the purchase price will be paid as a down payment and remitted to lienholders in the order of lien priority;

(2) Payments will not exceed 10 annual installments of principal plus interest. The interest rate will be the current rate being charged on a regular FO loan plus 1 percent or the rate on the borrower's notes, whichever is greater. Payments may be in equal or unequal installments with a balloon final installment;

(3) The Agency's security rights, including the right to foreclose on either the portion being sold or retained, will not be impaired;

(4) Any subsequent payments must be assigned to the lienholders and remitted in order of lien priority, or with lienholder approval, used in accordance with § 765.352;

(5) The mortgage on the property sold will not be released prior to either full payment of the borrower's account or receipt of the full amount of sale proceeds;

(6) The sale proceeds applied to the borrower's loan accounts will not relieve the borrower from obligations under the terms of the note or other agreements approved by the Agency;

(7) All other requirements of this section are met.

(e) *Transfer of allotments.* (1) The Agency will not approve any crop allotment lease that will adversely affect its security interest.

(2) The sale of an allotment must comply with all conditions of this subpart.

(3) The borrower may transfer crop allotments to another farm owned or controlled by the borrower. Such transfer will be treated as a lease under § 765.252.

§ 765.352 Use of proceeds.

(a) Proceeds from transactions affecting the real estate security may only be used as follows:

(1) Applied on liens in order of priority;

(2) To pay customary costs appropriate to the transaction, which meet the following conditions:

(i) Are reasonable in amount;

(ii) Cannot be paid by the borrower;

(iii) Will not be paid by the purchaser;

(iv) Must be paid to consummate the transaction; and

(v) May include postage and insurance when it is necessary for the Agency to present the promissory note to the recorder to obtain a release of a portion of the real estate from the mortgage.

(3) For development or enlargement of real estate owned by the borrower as follows:

(i) Development or enlargement must be necessary to improve the borrower's debt-payment ability, place the borrower's operation on a sound basis, or otherwise enhance the objectives of the loan;

(ii) Such use will not conflict with the loan purposes, restrictions or requirements of the type of loan involved;

(iii) Funds will be deposited in a supervised bank account in accordance with subpart B of part 761 of this chapter;

(iv) The Agency has, or will obtain, a lien on the real estate developed or enlarged;

(v) Construction and development will be completed in accordance with § 761.10 of this chapter.

(b) When liquidation is pending, the Agency may approve transactions only when all the proceeds will be applied to the liens against the security in the order of their priority, after deducting customary costs appropriate to the transaction. Such approval will not cancel or delay liquidation, unless all loan defaults are otherwise cured.

§ 765.353 Determining market value.

(a) *Security proposed for disposition.* (1) The Agency will obtain an appraisal of the security proposed for disposition.

(2) The Agency may waive the appraisal requirement when the estimated value is less than $20,000.

(b) *Security remaining after disposition.* The Agency will obtain an appraisal of the remaining security if it determines that the transaction will reduce the value of the remaining security by an amount greater than the value of the security proposed for disposition.

(c) *Appraisal requirements.* Appraisals, when required, will be conducted in accordance with § 761.7 of this chapter.

§§ 765.354–765.400 [Reserved]

Subpart I—Transfer of Security and Assumption of Debt

§ 765.401 Conditions for transfer of real estate and chattel security.

(a) *General conditions.* (1) Approval of a security transfer and corresponding loan assumption obligates a new borrower to repay an existing Agency debt.

(2) All transferees will become personally liable for the debt and assume the full responsibilities and obligations of the debt transferred when the transfer and assumption is complete. If the transferee is an entity, the entity and each member must assume personal liability for the loan.

(3) A transfer and assumption will only be approved if the Agency determines it is in the Agency's best financial interest.

(b) *Agency consent.* A borrower must request and obtain written Agency consent prior to selling or transferring security to another party.

§ 765.402 Transfer of security and loan assumption on same rates and terms.

An eligible applicant may assume an Agency loan under the same rates and terms as the original note if:

(a) The original borrower has died and the spouse, other relative, or joint tenant who is not obligated on the note inherits the security property;

(b) An immediate family member of the borrower's family or an entity comprised solely of immediate family members of the borrower assumes the debt along with the original borrower;

(c) An individual with an ownership interest in the borrower entity buys the entire ownership interest of the other members and continues to operate the farm in accordance with loan requirements. The new owner must assume personal liability for the loan;

(d) A new entity buys the borrower entity and continues to operate the farm in accordance with loan requirements; or

(e) The original loan is an EM loan for physical or production losses and persons who were directly involved in the farm's operation at the time of the loss will assume the loan. If the original loan was made to:

(1) An individual borrower, the transferee must be an immediate family member of the original borrower or an entity that is comprised solely of immediate family members of the original borrower.

(2) A trust, partnership or joint operation, the transferee must have been a member, partner or joint operator when the Agency made the original loan or remain an entity comprised solely of people who were original members, partners or joint operators when the entity received the original loan.

(3) A corporation, including limited liability company, or cooperative, the transferee must:

(i) Have been a corporate stockholder or a cooperative member when the Agency made the original loan or will be an entity comprised solely of people who were corporate stockholders or cooperative members when the entity received the loan; and

(ii) Assume only the portion of the physical or production loss loan equal to the transferee's percentage of ownership. In the case of entity transferees, the transferee must assume that portion of the loan equal to the combined percentages of ownership of the individual stockholders or members in the transferee.

§ 765.403 Transfer of security to and assumption of debt by eligible borrowers.

(a) *Transfer of real estate and chattel security.* The Agency may approve transfers of security with assumption of Agency debt by transferees eligible for the type of loan being assumed if:

(1) The transferee meets all loan and security requirements in 7 CFR part 764 for the type of loan being assumed; and

(2) The outstanding loan balance (principal and interest) does not exceed the maximum loan limit for the type of loan as contained in § 761.8 of this chapter.

(b) *Assumption of Non-program loans.* Applicants eligible for FO loans under 7 CFR part 764 may assume Non-program loans made for real estate purposes if the Agency determines the property meets program requirements. In such case, the Agency will reclassify the Non-program loan as a FO loan.

(c) *Loan types that the Agency no longer makes.* Real estate loan types the Agency no longer makes (*i.e.,* EE, SL, EO, RL, RHF) may be assumed and reclassified as FO loans if the transferee is eligible for a FO loan under 7 CFR part 764 and the property proposed for transfer meets program requirements.

(d) *Amount of assumption.* The transferee must assume the lesser of:

(1) The outstanding balance of the transferor's loan; or

(2) The present market value of the security, less prior liens and authorized costs, if the outstanding loan balance exceeds the present market value of the property.

§ 765.404 Transfer of security to and assumption of debt by ineligible borrowers.

(a) *General.* (1) The Agency will allow the transfer of real estate and chattel security property to borrowers who are ineligible for the type of loan being assumed only on Non-program loan rates and terms.

(2) The Agency will reclassify the assumed loan as a Non-program loan.

(b) *Eligibility.* Transferees must provide written documentation verifying their credit worthiness and debt repayment ability.

(c) *Assumption amount.* The transferee must assume the total outstanding Agency debt or if the value of the property is less than the entire amount of debt, an amount equal to the current market value of the security less any prior liens. The total outstanding Agency debt will include any unpaid deferred interest that accrued on the loan to the extent that the debt does not exceed the security's present market value.

(d) *Downpayment.* Non-program transferees must make a downpayment to the Agency of not less than 10 percent of the lesser of the present market value or unpaid debt.

(e) *Interest rate.* The interest rate will be the Non-program interest rate in effect at the time of loan approval.

(f) *Loan terms.* (1) For a Non-program loan secured by real estate, the Agency schedules repayment in 25 years or less, based on the borrower's repayment ability.

(2) For a Non-program loan secured by chattel property only, the Agency schedules repayment in five years or less, based on the borrower's repayment ability.

§ 765.405 Payment of costs associated with transfers.

The transferor and transferee are responsible for paying transfer costs such as real estate taxes, title examination, attorney's fees, surveys, and title insurance. When the transferor is unable to pay its portion of the transfer costs, the transferee, with Agency approval, may pay these costs provided:

(a) Any cash equity due the transferor is applied first to payment of costs and the transferor does not receive any cash payment above these costs;

(b) The transferee's payoff of any junior liens does not exceed $5,000;

(c) Fees are customary and reasonable;

(d) The transferee can verify that personal funds are available to pay transferor and transferee fees; and

(e) Any equity due the transferor is held in escrow by an Agency designated closing agent and is disbursed at closing.

§ 765.406 Release of transferor from liability.

(a) *General.* Agency approval of an assumption does not automatically release the transferor from liability.

(b) *Requirements for release.* (1) The Agency may release the transferor from liability when all of the security is transferred and the total outstanding debt is assumed.

(2) If an outstanding debt balance will remain and only part of the transferor's Agency security is transferred, the written request for release of liability will not be approved, unless the deficiency is otherwise resolved to the Agency's satisfaction.

(3) If an outstanding balance will remain and all of the transferor's security has been transferred, the transferor may pay the remaining balance or request debt settlement in accordance with 7 CFR part 792.

(4) Except for loans in default being serviced under 7 CFR part 766, if an individual who is jointly liable for repayment of an Agency loan withdraws from the operation and conveys all of their interest in the security to the remaining borrower, the withdrawing party may be released from liability under the following conditions:

(i) A divorce decree or property settlement states that the withdrawing party is no longer responsible for repaying the loan;

(ii) All of the withdrawing party's interests in the security are conveyed to the persons with whom the loan will be continued; and

(iii) The persons with whom the loan will be continued can demonstrate the ability to repay all of the existing and proposed debt obligations.

§§ 765.407–765.450 [Reserved]

Subpart J—Deceased Borrowers

§ 765.451 Continuation of FLP debt and transfer of security.

(a) *Individuals who are liable.* The Agency will continue the loan with any individual who was liable for the indebtedness provided that the individual complies with the obligations of the loan and security instruments.

(b) *Individuals who are not liable.* The Agency will continue the loan with a person who is not liable for the indebtedness in accordance with subpart I of this part.

§ 765.452 Borrowers with Non-program loans.

(a) *Loan continuation.* (1) The Agency will continue the loan with a jointly liable borrower if the borrower

continues to pay the deceased's loan in accordance with the terms of the loan.

(2) The Agency may continue the loan with an individual who inherits title to the property and is not liable for the indebtedness provided the individual makes payments as scheduled and fulfills all other responsibilities of the borrower under the promissory note.

(b) *Loan assumption.* A deceased borrower's loan may be assumed by an individual not liable for the indebtedness in accordance with subpart I of this part.

(c) *Loan discontinuation.* (1) The Agency will not continue a loan for any subsequent transfer of title by the heirs, or sale of interests between heirs to consolidate title; and

(2) The Agency treats any subsequent transfer of title as a sale subject to requirements listed in subpart I of this part.

§§ 765.453–765.500 [Reserved]

Subpart K—Exception Authority

§ 765.501 Agency exception authority.

On an individual case basis, the Agency may consider granting an exception to any regulatory requirement or policy of this part if:

(a) The exception is not inconsistent with the authorizing statute or other applicable law; and

(b) The Government's financial interest would be adversely affected by acting in accordance with published regulations or policies and granting the exception would resolve or eliminate the adverse effect upon the Government's financial interest.

§§ 765.502–765.550 [Reserved]

14. Add part 766 to read as follows:

PART 766—DIRECT LOAN SERVICING—SPECIAL

Subpart A—Overview

Sec.
766.1 Introduction to direct loan servicing—special.
766.2 Abbreviations and definitions.
766.3–766.50 [Reserved]

Subpart B—Disaster Set-Aside

766.51 General.
766.52 Eligibility.
766.53 Disaster Set Aside amount limitations.
766.54 Borrower application requirements.
766.55 Eligibility determination.
766.56 Security requirements.
766.57 Borrower acceptance of Disaster Set Aside.
766.58 Installment to be set aside.
766.59 Payments toward set-aside installments.
766.60 Canceling a Disaster Set Aside.
766.61 Reversal of a Disaster Set Aside.
766.62–766.100 [Reserved]

Subpart C—Loan Servicing Programs

766.101 Initial Agency notification to borrower of loan servicing programs.
766.102 Borrower application requirements.
766.103 Borrower does not respond or does not submit a complete application.
766.104 Borrower eligibility requirements.
766.105 Agency consideration of servicing requests.
766.106 Agency notification of decision regarding a complete application.
766.107 Consolidation and rescheduling.
766.108 Reamortization.
766.109 Deferral.
766.110 Conservation Contract.
766.111 Writedown.
766.112 Additional security for restructured loans.
766.113 Buyout of loan at current market value.
766.114 State-certified mediation and voluntary meeting of creditors.
766.115 Challenging the Agency appraisal.
766.116–766.150 [Reserved]

Subpart D—Homestead Protection Program

766.151 Purpose.
766.152 Applying for Homestead Protection.
766.153 Eligibility.
766.154 Homestead Protection transferability.
766.155 Homestead Protection leases.
766.156 Conflict with State law.
766.157–766.200 [Reserved]

Subpart E—Servicing Shared Appreciation Agreements and Net Recovery Buyout Agreements

766.201 Shared Appreciation Agreement.
766.202 Determining the shared appreciation due.
766.203 Payment of recapture.
766.204 Amortization of recapture.
766.205 Shared Appreciation Payment Agreement rates and terms.
766.206 Net Recovery Buyout Recapture Agreement.
766.207–766.250 [Reserved]

Subpart F—Unauthorized Assistance

766.251 Types of unauthorized assistance.
766.252 Repayment of unauthorized assistance.
766.253 Unauthorized assistance resulting from submission of false or incomplete information.
766.254 Unauthorized assistance resulting from borrower or Agency error.
766.255–766.300 [Reserved]

Subpart G—Bankruptcy

766.301 Notifying borrower in bankruptcy of loan servicing.
766.302 Loan servicing application requirements for borrowers in bankruptcy.
766.303 Processing loan servicing requests from borrowers in bankruptcy.
766.304–766.350 [Reserved]

Subpart H—Loan Liquidation

766.351 Liquidation.
766.352 Voluntary sale of real property and chattel.
766.353 Voluntary conveyance of real property.
766.354 Voluntary conveyance of chattel.
766.355 Acceleration of loans.
766.356 Involuntary liquidation of real property and chattel.
766.357–766.400 [Reserved]

Subpart I—Exception Authority

766.401 Agency exception authority.
766.402–766.450 [Reserved]

Appendix A to subpart C of 7 CFR 766—FSA 2501, Notice of Availability of Loan Servicing to Borrowers Who Are Current or Less Than 90 Days Past Due
Appendix B to subpart C of 7 CFR 766—FSA 2503, Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due
Appendix C to subpart C of 7 CFR 766—FSA 2505, Notice of Availability of Loan Servicing to Borrowers in Non-Monetary Default

Authority: 5 U.S.C. 301 and 7 U.S.C. 1981d and 1989.

Subpart A—Overview

§ 766.1 Introduction to direct loan servicing—special.

(a) This part describes the Agency's servicing policies for borrowers who:

(1) Are financially distressed;

(2) Are delinquent in paying direct loans or otherwise in default;

(3) Have received unauthorized assistance;.

(4) Have filed bankruptcy or are involved in other civil or criminal cases affecting the Agency; or

(5) Have loan security being liquidated voluntarily or involuntarily.

(b) The Agency services FLP direct loans under the policies contained in this part. The Agency does not service Non-program loans under this part except where noted.

(c) The Agency requires the borrower to make every reasonable attempt to make payments and comply with loan requirements before the Agency considers special servicing.

§ 766.2 Abbreviations and definitions.

Abbreviations and definitions for terms used in this part are provided in § 761.2 of this chapter.

§§ 766.3–766.50 [Reserved]

Subpart B—Disaster Set-Aside

§ 766.51 General.

(a) The DSA program is available to borrowers with FLP direct program loans who suffered losses as a result of a natural disaster.

(b) DSA is not intended to circumvent other servicing available under this part.

(c) Non-program loans may be serviced under this subpart for borrowers who also have FLP program loans.

§ 766.52 Eligibility.

(a) *Borrower eligibility.* The borrower must meet all of the following requirements to be eligible for a DSA:

(1) The borrower must have operated the farm in a county designated or declared a disaster area or a contiguous county at the time of the disaster. Farmers who have rented out their land base for cash are not operating the farm.

(2) The borrower must have acted in good faith, and the borrower's inability to make the upcoming scheduled loan payments must be for reasons not within the borrower's control.

(3) A borrower cannot have more than one installment set aside on each loan;

(4) As a direct result of the natural disaster, the borrower does not have sufficient income available to pay all essential family living and farm operating expenses, and debt to the Agency. This determination will be based on:

(i) The borrower's actual production, income and expense records for the year the natural disaster occurred;

(ii) Any other records required by the servicing official;

(iii) Compensation received for losses; and

(iv) Increased expenses incurred because of the natural disaster.

(5) For the next business accounting year, the borrower must develop a positive cash flow projection showing that the borrower will at least be able to pay all operating expenses and taxes due during the year, essential family living expenses, and meet scheduled payments on all debts, including FLP debts. The borrower must provide any documentation required to support the cash flow projection.

(6) The borrower must not be in non-monetary default.

(7) The borrower must not become 165 days past due before DSA is complete.

(b) *Loan eligibility.* (1) Any FLP loan to be considered for DSA must have been outstanding at the time the natural disaster occurred.

(2) All of the borrower's FLP program and Non-program loans must be current after the Agency completes a DSA of the scheduled installment.

(3) All FLP loans must be current or less than 90 days past due at the time the application for DSA is complete.

(4) The Agency has not accelerated or applied any servicing action to the loan since the natural disaster occurred.

(5) For any loan that will receive a DSA, the remaining term of the loan must equal or exceed 2 years from the due date of the installment set-aside.

§ 766.53 Disaster Set Aside amount limitations.

(a) The DSA amount is limited to:

(1) The first or second scheduled annual installment on the Agency loans due after the disaster occurred; or

(2) The amount the borrower is unable to pay the Agency due to the disaster. Borrowers are required to pay any portion of an installment they are able to pay.

(b) The amount set aside will be the unpaid balance remaining on the installment at the time the DSA is complete. This amount will include the unpaid interest and any principal that would be credited to the account as if the installment were paid on the due date, taking into consideration any payments applied to principal and interest since the due date.

(c) Recoverable cost items may not be set aside.

§ 766.54 Borrower application requirements.

(a) *Requests for DSA.* (1) A borrower must submit a request for DSA in writing within eight months from the date the natural disaster was designated.

(2) For an entity, all obligors of the Agency indebtedness must sign the DSA request.

(b) *Required financial information.* (1) The borrower must submit actual production, income, and expense records for the production and marketing period in which the disaster occurred unless the Agency already has this information.

(2) The Agency may request other information needed to make an eligibility determination.

§ 766.55 Eligibility determination.

Within 30 days of a complete DSA application, the Agency will determine if the borrower meets the eligibility requirements for DSA.

§ 766.56 Security requirements.

If the borrower is not current on all FLP loans when the borrower executes the appropriate DSA Agency documents, the borrower, and all obligors in the case of an entity, must execute and provide to the Agency a best lien obtainable on all of their assets except those listed under § 766.112 (b).

§ 766.57 Borrower acceptance of Disaster Set Aside.

The borrower must execute the appropriate Agency documents within 45 days after the borrower receives notification of Agency approval of DSA.

§ 766.58 Installment to be set aside.

(a) The Agency will set-aside the first installment due immediately after the disaster occurred.

(b) If the borrower has already paid the installment due immediately after the disaster occurred, the Agency will set-aside the next annual installment.

§ 766.59 Payments toward set-aside installments.

(a) *Interest accrual.* (1) Interest will accrue on any principal portion of the set-aside installment at the same rate charged on the balance of the loan.

(2) If the borrower's set-aside installment is for a loan with a limited resource rate and the Agency modifies that limited resource rate, the interest rate on the set-aside portion will be modified concurrently.

(b) *Due date.* The amount set-aside, including interest accrued on the principal portion of the set-aside, is due on or before the final due date of the loan.

(c) *Applying payments.* The Agency will apply borrower payments toward set-aside installments first to interest and then to principal.

§ 766.60 Canceling a Disaster Set Aside.

The Agency will cancel a DSA if:

(a) The Agency takes any primary loan servicing action on the loan;

(b) The borrower pays the market value buyout in accordance with § 766.113; or

(c) The borrower pays the set-aside installment.

§ 766.61 Reversal of a Disaster Set Aside.

If the Agency determines that the borrower received an unauthorized DSA, the Agency will reverse the DSA after all appeals are concluded.

§§ 766.62–766.100 [Reserved]

Subpart C—Loan Servicing Programs

§ 766.101 Initial Agency notification to borrower of loan servicing programs.

(a) *Borrowers notified.* The Agency will provide servicing information under this section to borrowers who:

(1) Have a current operating plan that demonstrates the borrower is financially distressed;

(2) Are 90 days or more past due on loan payments, even if the borrower has submitted an application for loan servicing as a financially distressed borrower;

(3) Are in non-monetary default on any loan agreements;

(4) Have filed bankruptcy;

(5) Request this information;

(6) Request voluntary conveyance of security;

(7) Have only delinquent SA; or

(8) Are subject to any other collection action except when such action is a result of failure to graduate. Borrowers

who fail to graduate when required and are able to do so, will be accelerated without providing notification of loan servicing options.

(b) *Form of notification.* The Agency will notify borrowers of the availability of primary loan servicing programs, conservation contract, current market value buyout, debt settlement programs and homestead protection as follows:

(1) A borrower who is financially distressed, or current and requesting servicing will be provided FSA 2501;

(2) A borrower who is 90 days past due will be sent FSA 2503;

(3) A borrower who is in non-monetary or both monetary and non-monetary default will receive FSA 2505;

(4) A borrower who has only delinquent SA will be notified of available loan servicing;

(5) Notification to a borrower who files bankruptcy will be provided in accordance with subpart G of this part.

(c) *Mailing.* Notices to delinquent borrowers or borrowers in non-monetary default will be sent by certified mail to the last known address of the borrower.

(d) *Borrower response timeframes.* To be considered for loan servicing, a borrower who is:

(1) Current or financially distressed may submit a complete application any time prior to becoming 90 days past due;

(2) Ninety (90) days past due must submit a complete application within 60 days from receipt of FSA 2503;

(3) In non-monetary default with or without monetary default must submit a complete application within 60 days from receipt of FSA 2505.

§ 766.102 Borrower application requirements.

(a) Except as provided in paragraph (e) of this section, an application for primary loan servicing, conservation contract, current market value buyout, homestead protection, or some combination of these options, must include the following to be considered complete:

(1) Completed acknowledgment form provided with the Agency notification;

(2) Completed Agency application form. In the case of an entity, all entity members must provide current financial statements;

(3) Financial records for the three most recent years, including income tax returns;

(4) Farm operation production records for the three most recent years or the years the borrower has been farming, whichever is less;

(5) Documentation of compliance with the Agency's environmental regulations contained in 7 CFR 799;

(6) Verification of all non-farm income;

(7) The farm's operating plan, including projected cash flow budget reflecting production, income, expenses, and debt repayment plan; and

(8) Verification of all debts and collateral.

(b) In addition to the requirements contained in paragraph (a) of this section, the borrower must submit an aerial photo delineating any land to be considered for a conservation contract.

(c) To be considered for debt settlement, the borrower must provide the appropriate Agency form, and any additional information required under 7 CFR 792.

(d) If a borrower who submitted a complete application while current or financially distressed is renotified as a result of becoming 90 days past due, the borrower must only submit a request for servicing in accordance with paragraph (a)(1) of this section, provided all other information is less than 90 days old and is based on the current production cycle. Any information 90 or more days old or not based on the current production cycle must be updated.

(e) The borrower need not submit any information under this section that already exists in the Agency's file and is still current as determined by the Agency.

(f) When jointly liable borrowers have been divorced and one has withdrawn from the operation, the Agency may release the withdrawing individual from liability, provided:

(1) The remaining individual submits a complete application in accordance with this section;

(2) Both parties have agreed in a divorce decree or property settlement that only the remaining individual will be responsible for all Agency loan payments;

(3) The withdrawing individual has conveyed all ownership interest in the security to the remaining individual; and

(4) The withdrawing individual does not have repayment ability and does not own any non-essential assets.

§ 766.103 Borrower does not respond or does not submit a complete application.

(a) If a borrower who was financially distressed, or current and requested loan servicing and received FSA 2501 but fails to timely respond and subsequently becomes 90 days past due, the Agency will notify the borrower in accordance with § 766.101(a)(2).

(b) If a borrower who is 90 days past due without non-monetary default and received FSA 2503, or is in non-monetary default and received FSA 2505 and fails to timely respond or does not submit a complete application within the 60-day timeframe, the Agency will notify the borrower by certified mail of the following:

(1) The Agency's intent to accelerate the loan; and

(2) The borrower's right to request reconsideration, mediation and appeal in accordance with 7 CFR part 11 and 7 CFR part 780.

§ 766.104 Borrower eligibility requirements.

(a) A borrower must meet the following eligibility requirements to be considered for primary loan servicing:

(1) Any delinquency or financial distress is due to circumstances beyond the borrower's control which reduced repayment ability to the extent that scheduled payments cannot be made as a result of one of the following circumstances:

(i) Illness, injury, or death of a borrower or other individual who operates the farm;

(ii) Natural disaster, adverse weather, disease, or insect damage which caused severe loss of agricultural production;

(iii) Widespread economic conditions such as low commodity prices;

(iv) Damage or destruction of property essential to the operation; or

(v) Loss of, or reduction in, the borrower or spouse's essential non-farm income.

(2) The borrower does not have non-essential assets for which the net recovery value is sufficient to resolve the financial distress or pay the delinquent portion of the loan.

(3) If the borrower is in non-monetary default, the borrower will resolve the non-monetary default prior to closing the servicing action.

(4) The borrower has acted in good faith in accordance with the borrower's loan agreements.

(5) Financially distressed or current borrowers requesting servicing must pay a portion of the interest due on the loans.

(b) Debtors with SA only must:

(1) Be delinquent due to circumstances beyond their control;

(2) Have acted in good faith.

§ 766.105 Agency consideration of servicing requests.

(a) *Order in which Agency considers servicing options.* The Agency will consider loan servicing options and combinations of options to maximize loan repayment and minimize losses to the Agency. The Agency will consider loan servicing options in the following order for each eligible borrower who requests servicing:

(1) Conservation Contract, if requested;

(2) Consolidation and rescheduling or reamortization;

(3) Deferral;

(4) Writedown; and

(5) Current market value buyout.

(b) *Debt service margin.*

(1) The Agency will attempt to achieve a 110 percent debt service margin for the servicing options listed in paragraphs (a)(2) through (4) of this section.

(2) If the borrower cannot develop a feasible plan with the 110 percent debt service margin, the Agency will reduce the debt service margin by one percent and reconsider all available servicing authorities. This process will be repeated until a feasible plan has been developed or it has been determined that a feasible plan is not possible with a 100 percent margin.

(3) The borrower must be able to develop a feasible plan with at least a 100 percent debt service margin to be considered for the servicing options listed in paragraphs (a)(1) through (4) of this section.

(c) *Appraisal of borrower's assets.* The Agency will obtain an appraisal on:

(1) All Agency security, non-essential assets, and real property unencumbered by the Agency that does not meet the criteria established in § 766.112(b), when:

(i) A writedown is required to develop a feasible plan;

(ii) The borrower will be offered current market value buyout.

(2) The borrower's non-essential assets when their net recovery value may be adequate to bring the delinquent loans current.

§ 766.106 Agency notification of decision regarding a complete application.

The Agency will notify a borrower of the Agency's decision within 60 calendar days after receiving a complete application for loan servicing.

(a) *Notification to financially distressed or current borrowers.* (1) If the borrower can develop a feasible plan and is eligible for primary loan servicing, the Agency will offer to service the account.

(i) The borrower will have 45 days to accept the offer of servicing. After accepting the Agency's offer, the borrower must execute loan agreements and security instruments, as appropriate.

(ii) If the borrower does not accept the offer, the Agency will renotify the borrower of the availability of loan servicing if the borrower becomes 90 days past due in accordance with § 766.101(a)(2).

(2) If the borrower cannot develop a feasible plan, or is not eligible for loan servicing, the Agency will notify the borrower of the reasons for the adverse decision.

(i) The borrower may request reconsideration, mediation and appeal in accordance with 7 CFR 11 and 7 CFR 780 of this title.

(ii) The Agency will renotify the borrower of the availability of loan servicing if the borrower becomes 90 days past due in accordance with § 766.101(a)(2).

(b) *Notification to borrowers 90 days past due or in non-monetary default.* (1) If the borrower can develop a feasible plan and is eligible for primary loan servicing, the Agency will offer to service the account.

(i) The borrower will have 45 days to accept the offer of servicing. After accepting the Agency's offer, the borrower must execute loan agreements and security instruments, as appropriate.

(ii) If the borrower does not accept the offer, or fails to respond, the Agency will notify the borrower of its intent to accelerate the account.

(2) If the borrower cannot develop a feasible plan, or is not eligible for loan servicing, the Agency will notify the borrower of its intent to accelerate the account in accordance with subpart H of this part, unless the account is resolved through any of the following options:

(i) The borrower may request reconsideration, mediation or voluntary meeting of creditors, or appeal in accordance with 7 CFR part 11 and 7 CFR part 780.

(ii) The borrower may request negotiation of appraisal within 30 days in accordance with § 766.115.

(iii) If the net recovery value of non-essential assets is sufficient to pay the account current, the borrower has 90 days to pay the account current.

(iv) The borrower, if eligible in accordance with § 766.113, may buyout the loans at the current market value within 90 days.

(v) The borrower may request homestead protection if the borrower's primary residence was pledged as security by providing the information required under § 766.152.

§ 766.107 Consolidation and rescheduling.

(a) *Loans eligible for consolidation.* The Agency may consolidate OL loans if:

(1) The borrower meets loan servicing eligibility requirements in § 766.104;

(2) The Agency determines that consolidation will assist the borrower to repay the loans;

(3) Consolidating the loans will bring the borrower's account current or prevent the borrower from becoming delinquent;

(4) The Agency has not referred the borrower's account to OGC or the U.S. Attorney, and the Agency does not plan to refer the account to either of these two offices in the near future;

(5) The borrower is in compliance with the Highly Erodible Land and Wetland Conservation requirements of 7 CFR part 12, if applicable;

(6) The loans are not secured by real estate;

(7) The Agency holds the same lien position on each loan;

(8) The Agency has not serviced the loans for unauthorized assistance under subpart F of this part; and

(9) The loan is not currently deferred, as described in § 766.109, or set-aside, as described in subpart B of this part. The Agency may consolidate loans upon cancellation of the deferral or DSA.

(b) *Loans eligible for rescheduling.* The Agency may reschedule loans made for chattel purposes, including OL, SW, RL, EE, or EM if:

(1) The borrower meets loan servicing eligibility requirements in § 766.104;

(2) Rescheduling the loans will bring the borrower's account current or prevent the borrower from becoming delinquent;

(3) The Agency determines that rescheduling will assist the borrower to repay the loans;

(4) The Agency has not referred the borrower's account to OGC or the U.S. Attorney, and the Agency does not plan to refer the account to either of these two offices in the near future;

(5) The borrower is in compliance with the Highly Erodible Land and Wetland Conservation requirements of 7 CFR 12, if applicable; and

(6) The loan is not currently deferred, as described in § 766.109, or set-aside, as described in subpart B of this part. The Agency may reschedule loans upon cancellation of the deferral or DSA.

(c) *Consolidated and rescheduled loan terms.* (1) The Agency determines the repayment schedule for consolidated and rescheduled loans according to the borrower's repayment ability.

(2) The repayment period cannot exceed 15 years from the date of the consolidation and rescheduling, except that the repayment schedule for RL loans may not exceed 7 years from the date of rescheduling.

(d) *Consolidated and rescheduled loan interest rate.* The interest rate of consolidated and rescheduled loans will be as follows:

(1) The interest rate for loans made at the regular interest rate will be the lesser of:

(i) The lowest interest rate for that type of loan on the date a complete servicing application was received;

(ii) The lowest interest rate for that type of loan on the date of restructure; or

(iii) The lowest original loan note rate on any of the original notes being consolidated and rescheduled.

(2) The interest rate for loans made at the limited resource interest rate will be the lesser of:

(i) The limited resource interest rate for that type of loan on the date a complete servicing application was received;

(ii) The limited resource interest rate for that type of loan on the date of restructure; or

(iii) The lowest original loan note rate on any of the original notes being consolidated and rescheduled.

(3) At the time of consolidation and rescheduling, the Agency may reduce the interest rate to a limited resource rate, if available, if:

(i) The borrower meets the requirements for the limited resource interest rate; and

(ii) A feasible plan cannot be developed at the regular interest rate and maximum terms permitted in this section.

(4) Loans consolidated and rescheduled at the limited resource interest rate will be subject to annual limited resource review in accordance with § 765.51 of this chapter.

(e) *Capitalizing accrued interest and adding protective advances to the loan principal.* (1) The Agency capitalizes the amount of outstanding accrued interest on the loan at the time of consolidation and rescheduling.

(2) The Agency adds protective advances for the payment of real estate taxes to the principal balance at the time of consolidation and rescheduling.

(3) The borrower must resolve all other protective advances not capitalized prior to closing the servicing actions.

(f) *Installments.* If there are no deferred installments, the first installment payment under the consolidation and rescheduling will be at least equal to the interest amount which will accrue on the new principal between the date the promissory note is processed and the next installment due date.

§ 766.108 Reamortization.

(a) *Loans eligible for reamortization.* The Agency may reamortize loans made for real estate purposes, including FO, SW, RL, SA, EE, RHF, and EM if:

(1) The borrower meets the loan servicing eligibility requirements listed in § 766.104;

(2) Reamortization will bring the borrower's account current or prevent the borrower from becoming delinquent;

(3) The Agency determines that reamortization will assist the borrower to repay the loan;

(4) The Agency has not referred the borrower's account to OGC or the U.S. Attorney, and the Agency does not plan to refer the account to either of these two offices in the near future;

(5) The borrower is in compliance with the Highly Erodible Land and Wetland Conservation provisions of 7 CFR part 12, if applicable; and

(6) The loan is not currently deferred, as described in § 766.109, or set-aside, as described in subpart B of this part. The Agency may reamortize loans upon cancellation of the deferral or DSA.

(b) *Reamortized loan terms.* (1) Except as provided in paragraph (b)(2), the Agency will reamortize loans within the remaining term of the original loan or assumption agreement unless a feasible plan cannot be developed or debt forgiveness will be required to develop a feasible plan.

(2) If the Agency extends the loan term, the repayment period from the original loan date may not exceed the maximum number of years for the type of loan being reamortized as set forth below, or the useful life of the security, whichever is less.

(i) FO, SW, RL, EE real estate-type, and EM loans made for real estate purposes may not exceed 40 years from the date of the original note or assumption agreement.

(ii) EE real estate-type loans secured by chattels only may not exceed 20 years from the date of the original note or assumption agreement.

(iii) RHF loans may not exceed 33 years from the date of the original note or assumption agreement.

(iv) SA loans may not exceed 25 years from the date of the original Shared Appreciation note.

(c) *Reamortized loan interest rate.* The interest rate will be as follows:

(1) The interest rate for loans made at the regular interest rate will be the lesser of:

(i) The lowest interest rate for that type of loan on the date a complete servicing application was received;

(ii) The lowest interest rate for that type of loan on the date of restructure; or

(iii) The original loan note rate of the note being reamortized.

(2) The interest rate for loans made at the limited resource interest rate will be the lesser of:

(i) The limited resource interest rate for that type of loan on the date a complete servicing application was received;

(ii) The limited resource interest rate for that type of loan on the date of restructure; or

(iii) The original loan note rate of the note being reamortized.

(3) At the time of reamortization, the Agency may reduce the interest rate to a limited resource rate, if available, if:

(i) The borrower meets the requirements for the limited resource interest rate; and

(ii) A feasible plan cannot be developed at the regular interest rate and maximum terms permitted in this section.

(4) Loans reamortized at the limited resource interest rate will be subject to annual limited resource review in accordance with § 765.51 of this chapter.

(5) SA payment agreements will be reamortized at the current SA amortization rate in effect on the date of approval or the rate on the original payment agreement, whichever is less.

(d) *Capitalizing accrued interest and adding protective advances to the loan principal.* (1) The Agency capitalizes the amount of outstanding accrued interest on the loan at the time of reamortization.

(2) The Agency adds protective advances for the payment of real estate taxes to the principal balance at the time of reamortization.

(3) The borrower must resolve all other protective advances not capitalized prior to closing the reamortization.

(e) *Installments.* If there are no deferred installments, the first installment payment under the reamortization will be at least equal to the interest amount which will accrue on the new principal between the date the promissory note is processed and the next installment due date.

§ 766.109 Deferral.

(a) *Conditions for approving deferrals.* The Agency will only consider deferral of loan payments if:

(1) The borrower meets the loan servicing eligibility requirements of § 766.104;

(2) Rescheduling, consolidation, and reamortization of all the borrower's loans, will not result in a feasible plan with 110 percent debt service margin;

(3) The need for deferral is temporary; and

(4) The borrower develops feasible first-year deferral and post-deferral plans subject to the following:

(i) The deferral will not create excessive net cash reserves beyond that necessary to develop a feasible plan.

(ii) The Agency will consider a partial deferral if deferral of the total Agency

payment would result in the borrower developing more cash availability than necessary to meet debt repayment obligations.

(b) *Deferral period.* (1) The deferral term will be based on the post-deferral plan which results in the greatest improvement over the first year cash available to service FLP debt, and in no case will exceed 5 years.

(2) The Agency will distribute interest accrued on the deferred principal portion of the loan equally to payments over the remaining loan term after the deferral period ends.

(c) *Agency actions when borrower's repayment ability improves.* (1) If the Agency determines that the borrower's repayment ability has increased to allow the borrower to make some payments during the deferral period, the borrower must make supplemental payments, as determined by the Agency. If the borrower agrees to make supplemental payments, but does not do so, the borrower will be considered to be in non-monetary default.

(2) If the Agency determines that the borrower's improved repayment ability will allow graduation, the Agency will require the borrower to graduate in accordance with part 765, subpart C of this chapter.

(d) *Associated loan servicing.* (1) The Agency must cancel an existing deferral if the Agency approves any new primary loan servicing action.

(2) Loans deferred will also be serviced in accordance with §§ 766.107, 766.108 and 766.111, as appropriate.

§ 766.110 Conservation Contract.

(a) *General.* (1) A debtor with only SA is not eligible for a Conservation Contract.

(2) A current or financially distressed borrower may request a Conservation Contract at any time prior to becoming 90 days past due.

(3) A delinquent borrower may request a Conservation Contract during the same 60-day time period in which the borrower may apply for primary loan servicing. The borrower eligibility requirements established at § 766.104 will apply.

(4) A Conservation Contract may be established for conservation, recreation, and wildlife purposes.

(5) The land under a Conservation Contract cannot be used for the production of agricultural commodities during the term of the contract.

(b) *Eligible lands.* The following types of lands are eligible to be considered for a Conservation Contract by the Conservation Contract review team:

(1) Wetlands or highly erodible lands, as defined by the Food Security Act of 1985; and

(2) Uplands that meet any one of the following criteria:

(i) Land containing aquatic life, endangered species, or wildlife habitat of local, State, tribal, or national importance;

(ii) Land in 100-year floodplains;

(iii) Areas of high water quality or scenic value;

(iv) Historic or cultural properties listed in or eligible for the National Register of Historic Places;

(v) Aquifer recharge areas of local, regional, State or tribal importance;

(vi) Buffer areas necessary for the adequate protection of proposed Conservation Contract areas;

(vii) Areas that contain soils generally not suited for cultivation; or

(viii) Areas within or adjacent to Federal, State, tribal, or locally administered conservation areas.

(c) *Unsuitable acreage.* Acreage is unsuitable for a Conservation Contract if:

(1) It is not suited or eligible for the program due to legal restrictions;

(2) It has on-site or off-site conditions that prohibit the use of the land for conservation, wildlife, or recreational purposes; or

(3) The Conservation Contract review team determines that the land is not suitable for conservation, wildlife, or recreational purposes.

(d) *Conservation Contract terms.* The borrower selects the term of the contract, which may be 10, 30, or 50 years.

(e) *Conservation management plan.* The Agency, through the recommendations of the Conservation Contract review team, is responsible for developing a conservation management plan.

(f) *Management authority.* The Agency has enforcement authority over the Conservation Contract. The Agency, however, may delegate contract management to another entity if doing so is in the Agency's interest.

(g) *Limitations.* The Conservation Contract must meet the following conditions:

(1) Result in a feasible plan for current borrowers; or

(2) Result in a feasible plan with or without primary loan servicing for financially distressed or delinquent borrowers; and

(3) Improve the borrower's ability to repay the remaining balance of the loan.

(h) *Maximum debt reduction for a financially distressed or current borrower.* The amount of debt reduction by a Conservation Contract is calculated as follows:

(1) Divide the contract acres by the total acres that secure the borrower's FLP loans to determine the contract acres percentage.

$$\frac{\text{Contract acres}}{\text{divided by}}\ \frac{\text{Total acres}}{=}\ \frac{\text{Percent of contract acres to total acres}}{}$$

(2) Multiply the borrower's total unpaid FLP loan balance (principal, interest and recoverable costs already paid by the Agency) by the percentage calculated under (h)(1) of this section to determine the amount of Agency debt that is secured by the contract acreage.

$$\frac{\text{Total FLP debt}}{\times}\ \frac{\text{Percent calculated under (h)(1)}}{=}\ \frac{\text{FLP debt secured by contract acres}}{}$$

(3) Multiply the borrower's total unpaid FLP loan balance (principal, interest and recoverable costs already paid by the Agency) by 33 percent.

$$\frac{\text{Total FLP debt}}{\times 33\% =}\ \frac{\quad}{}$$

(4) The lesser of the amounts calculated in (h)(2) and (h)(3) of this section is the maximum amount of debt reduction for a 50-year contract.

(5) The borrower will receive 60 percent of the amount calculated in (h)(4) of this section for a 30-year contract.

$$\frac{\text{Result from (h)(4)}}{} \times 60\% = \frac{\text{Maximum debt reduction for a 30-year contract}}{}$$

(6) The borrower will receive 20 percent of the amount calculated in (h)(4) of this section for a 10-year contract.

$$\frac{\text{Result from (h)(4)}}{} \times 20\% = \frac{\text{Maximum debt reduction for a 10-year contract}}{}$$

(i) *Maximum debt reduction for a delinquent borrower.* The amount of debt reduction by a Conservation Contract is calculated as follows:

(1) Divide the contract acres by the total acres that secure the borrower's FLP loans to determine the contract acres percentage.

$$\frac{\text{Contract acres}}{} \text{ divided by } \frac{\text{Total acres}}{} = \frac{\text{Percent of contract acres to total acres}}{}$$

(2) Multiply the borrower's total unpaid FLP loan balance (principal, interest and recoverable costs already paid by the Agency) by the percentage calculated in (i)(1) of this section to determine the amount of FLP debt that is secured by the contract acreage.

$$\frac{\text{Total FLP debt}}{} \times \frac{\text{Percent calculated in (i)(1)}}{} = \frac{\text{FLP debt secured by contract acres}}{}$$

(3) Multiply the present market value of the total acres, less contributory value of any structural improvements, that secure the borrower's FLP loans by the percent calculated in (i)(1) of this section to determine the current value of the acres in the contract.

$$\frac{\text{Current market value of total acres less contributory value of structural improvements}}{} \times \frac{\text{Percent calculated in (i)(1)}}{} = \frac{\text{Current market value of acres in the contract}}{}$$

(4) Subtract the current market value of the contract acres calculated in (i)(3) of this section from the FLP debt secured by the contract acres as calculated in (i)(2).

$$\frac{\text{Results from (i)(2)}}{} - \frac{\text{Results from (i)(3)}}{} = \frac{\text{Difference}}{}$$

(5) Select the greater of the amounts calculated in (i)(3) and (i)(4) of this section.

(6) The lesser of the amounts calculated in (i)(2) and (i)(5) of this section will be the maximum amount of debt reduction for a 50-year contract term.

(7) The borrower will receive 60 percent of the amount calculated in (i)(6) of this section for a 30-year contract term.

$$\frac{\text{Result from (i)(6)}}{} \times 60\% = \frac{\text{Maximum debt cancellation for a 30-year term}}{}$$

(8) The borrower will receive 20 percent of the amount calculated in (i)(6) of this section for a 10-year contract term.

$$\frac{\text{Result from (i)(6)}}{} \times 20\% = \frac{\text{Maximum debt cancellation for a 10-year term}}{}$$

(j) *Conservation Contract Agreement.* The borrower must sign the Conservation Contract Agreement establishing the contract's terms and conditions.

(k) *Transferring title to land under Conservation Contract.* If the borrower or any subsequent landowner transfers title to the property, the Conservation Contract will remain in effect for the duration of the contract term.

(l) *Borrower appeals of technical decisions.* If the borrower appeals any technical decision made in connection with a Conservation Contract, the Natural Resources Conservation Service's appeal process at 7 CFR part 614 must be followed.

§ 766.111 Writedown.

(a) *Eligibility.* (1) The Agency will only consider a writedown if the borrower:

(i) Meets the eligibility criteria in § 766.104;

(ii) Is delinquent;

(iii) Has not previously received debt forgiveness on any FLP direct loan; and

(iv) Complies with the Highly Erodible Land and Wetland Conservation requirements of 7 CFR 12.

(2) Debtors with SA only are not eligible to receive writedown.

(b) *Conditions.* (1) Rescheduling, consolidation, reamortization, deferral or some combination of these options on all of the borrower's loans would not result in a feasible plan with a 110 percent debt service margin. If a feasible plan, including writedown is achieved with a debt service margin of 101 percent or more, the Agency will determine if a feasible plan can be achieved without a writedown. If a feasible plan is achieved with and without a writedown and the borrower meets all the eligibility requirements, both options will be offered and the borrower may choose one option.

(2) The present value of the restructured loan must be greater than or equal to the net recovery value of Agency security and any non-essential assets;

(3) The writedown amount does not exceed $300,000 excluding debt reduction received through Conservation Contract;

(4) A borrower who owns real estate must execute an SAA in accordance with § 766.201.

(c) *Associated loan servicing.* Loans written down will also be serviced in accordance with §§ 766.107 and 766.108, as appropriate.

§ 766.112 Additional security for restructured loans.

(a) The borrower, and all obligors in the case of an entity, must execute and provide to the Agency a lien on all of their assets, except as provided in paragraph (b) of this section, when the Agency is servicing a loan.

(b) The Agency will take the best lien obtainable on all assets the borrower owns, except:

(1) When taking a lien on such property will prevent the borrower from obtaining credit from other sources;

(2) When the property could have significant environmental problems or costs as described in 7 CFR 799;

(3) When the Agency cannot obtain a valid lien;

(4) When the property is the borrower's personal residence and appurtenances and:

(i) They are located on a separate parcel; and

(ii) The real estate that serves as collateral for the Agency loan plus crops and chattels are valued at greater than or equal to 150 percent of the unpaid balance due on the loan;

(5) When the property is subsistence livestock, cash, special collateral accounts the borrower uses for the farming operation, retirement accounts, personal vehicles necessary for family living, household goods, or small equipment such as hand tools and lawn mowers; or

(6) When a contractor holds title to a livestock or crop enterprise, or the borrower manages the enterprise under a share lease or share agreement.

§ 766.113 Buyout of loan at current market value.

(a) *Borrower eligibility.* A delinquent borrower who has received FSA 2503 may buy out the borrower's Agency loans at the current market value of the loan security, including security not in the borrower's possession, and all non-essential assets if:

(1) The borrower has not previously received debt forgiveness on any other FLP direct loan;

(2) The borrower has acted in good faith;

(3) The borrower does not have non-essential assets for which the net recovery value is sufficient to pay the account current;

(4) The borrower is unable to develop a feasible operating plan through primary loan servicing programs or a Conservation Contract, if requested;

(5) The present value of the restructured loans is less than the net recovery value of Agency security;

(6) The borrower pays the amount required in a lump sum without guaranteed or direct credit from the Agency; and

(7) The amount of debt forgiveness does not exceed $300,000.

(b) *Buyout time frame.* After the Agency offers current market value buyout of the loan, the borrower has 90 days from the date of Agency notification to pay that amount.

§ 766.114 State-certified mediation or voluntary meeting of creditors.

(a) A borrower who is unable to develop a feasible plan but is otherwise eligible for primary loan servicing may request:

(1) State-certified mediation; or

(2) Voluntary meeting of creditors when a State does not have a certified mediation program.

(b) Any negotiation of the Agency's appraisal must be completed before State-certified mediation or voluntary meeting of creditors.

§ 766.115 Challenging the Agency appraisal.

(a) A borrower considered for primary loan servicing who does not agree with the Agency's appraisal of the borrower's assets may:

(1) Obtain a technical appraisal review of the Agency's appraisal and provide it at the appeal hearing;

(2) Obtain an independent appraisal completed in accordance with § 761.7 as part of the appeals process. The borrower must:

(i) Pay for this appraisal;

(ii) Choose which appraisal will be used in Agency calculations, if the difference between the two appraisals is less than 5 percent.

(3) Negotiate the Agency's appraisal by obtaining a second appraisal.

(i) If the difference between the two appraisals is less than five percent, the borrower will choose the appraisal to be used in Agency calculations.

(ii) If the difference between the two appraisals is greater than five percent, the borrower may request a third appraisal. The Agency and the borrower will share the cost of the third appraisal equally. The average of the two appraisals closest in value will serve as the final value.

(iii) A borrower may request a negotiated appraisal only once in connection with an application for primary loan servicing.

(iv) The borrower may not appeal a negotiated appraisal.

(b) If the appraised value of the borrower's assets changes as a result of the appealed appraisal or the negotiated appraisal, the Agency will reconsider its previous loan servicing decision using the new appraisal value.

(c) If the appeal process results in a determination that the borrower is eligible for primary loan servicing, the Agency will use the information the appeal officer used in making the decision on the appeal, unless stated otherwise in the appeal decision letter.

§§ 766.116–766.150 [Reserved]

Subpart D—Homestead Protection Program

§ 766.151 Purpose.

The Homestead Protection Program provides an opportunity for borrowers to retain their principal residence and up to 10 acres of adjoining land to maintain their family, through a lease-purchase agreement with the Agency. If the Agency has only chattels as security, homestead protection will not apply.

§ 766.152 Applying for Homestead Protection.

(a) *Pre-acquisition.* (1) *Notification.* If the borrower requested primary loan servicing but cannot develop a feasible plan, the Agency will notify the borrower of any additional information needed to process the homestead protection request. The borrower must provide this information within 30 days of Agency notification.

(2) *Borrower does not respond.* If the borrower does not timely provide the information requested, the Agency will deny the homestead protection request and provide reconsideration and appeal rights.

(3) *Application requirements.* A complete application for Homestead Protection will include:

(i) Updates to items required under § 766.102;

(ii) Information required under § 766.353(b); and

(iii) Identification of land and buildings to be considered.

(b) *Post-acquisition.* (1) *Notification.* After the Agency acquires title to the property, the Agency will notify the

borrower of the availability of homestead protection. The borrower must submit a complete application within 30 days of Agency notification.

(2) *Borrower does not respond.* If the borrower does not respond to the Agency notice, the Agency will dispose of the property in accordance with 7 CFR 767.

(3) *Application requirements.* A complete application for Homestead Protection will include:

(i) Updates to items required under § 766.102; and

(ii) Identification of land and buildings to be considered.

§ 766.153 Eligibility.

(a) *Property.* (1) The principal residence and the adjoining land of up to 10 acres, must have served as real estate security for the FLP loan and may include existing farm service buildings.

(2) The applicant may propose a homestead protection site. Any proposed site is subject to Agency approval.

(3) The proposed homestead protection site must meet all State and local requirements for division into a separate legal lot.

(4) Where voluntary conveyance of the property to the Agency is required to process the Homestead Protection request, the Agency will take title to the property only if it can obtain a positive recovery after paying any outstanding liens of other creditors on the property.

(b) *Applicant.* To be eligible for Homestead Protection, the applicant:

(1) Must be the owner, or former owner from whom the Agency acquired title of the property pledged as security for an FLP loan;

(i) Is a member of an entity who is or was personally liable for the FLP loan secured by the Homestead Protection property and the applicant or entity held fee title to the property;

(ii) Is an entity and the members of the entity are or were personally liable for the FLP loan and have separate homes on the security property, each member possessing and occupying a separate home may apply for homestead protection.

(2) Must have earned gross farm income commensurate with:

(i) The size and location of the farm; and

(ii) The local agricultural conditions in at least two calendar years during the 6-year period immediately preceding the calendar year in which the borrower applied for Homestead Protection;

(3) Must have received 60 percent of gross income from farming in at least 2 of the 6 years immediately preceding the year in which the borrower applied for Homestead Protection;

(4) Must have lived in the home during the 6-year period immediately preceding the year in which the borrower applied for Homestead Protection. The borrower may have left the home for not more than 12 months if it was due to circumstances beyond their control; and

(5) Must demonstrate sufficient income to make rental payments on the homestead property for the term of the lease and to maintain the property in good condition. The lessee will be responsible for any normal maintenance, making any improvements to the property, and replacing systems such as:

(i) Structural;

(ii) Mechanical;

(iii) Electrical;

(iv) Plumbing;

(v) Well;

(vi) Water;

(vii) Septic;

(viii) Sewage;

(ix) Appliance;

(x) Corral;

(xi) Fences;

(xii) Windmills;

(xiii) Outbuildings; and

(xiv) Any other system that is affixed to or a part of the real estate.

§ 766.154 Homestead Protection transferability.

Homestead protection rights are not transferrable or assignable, unless the eligible party dies or becomes legally incompetent in which case the homestead protection rights may be transferred to the spouse only.

§ 766.155 Homestead Protection leases.

(a) *General.* (1) The Agency may approve a lease-purchase agreement subject to obtaining title to the property.

(2) If a third party obtains title to the property:

(i) The applicant and the property are no longer eligible for homestead protection; and

(ii) The Agency will not implement any outstanding lease-purchase agreement.

(3) The borrower may request homestead protection for property subject to third party redemption rights. In such case, homestead protection will not begin until the Agency obtains title to the property.

(b) *Lease terms and conditions.* (1) The amount of rent will be based on equivalent rents charged for similar residential properties in the area in which the dwelling is located.

(2) All leases will include an option to purchase the homestead protection property as described in paragraph (c) of this section.

(3) The lease term will not be less than three years and will not exceed five years.

(4) The lessee must agree to make lease payments on time and maintain the property.

(5) The lessee must cooperate with Agency efforts to sell the remaining portion of the farm.

(c) *Lease-purchase options.* (1) The lessee may exercise in writing the purchase option and complete the homestead protection purchase at any time prior to the expiration of the lease provided all lease payments are current.

(2) The purchase price is the current market value of the property when the option is exercised as determined by a current appraisal obtained by the Agency.

(3) The lessee may purchase homestead protection property with cash or other credit source.

(4) The lessee may receive Agency Non-program financing provided:

(i) The lessee has not received previous debt forgiveness;

(ii) The Agency has funds available to finance the purchase of homestead protection property; and

(iii) The lessee demonstrates an ability to repay such an Agency loan.

(d) *Lease terminations.* The Agency may terminate the lease if the lessee does not cure any lease defaults within 30 days of Agency notification.

(e) *Appraisal of Homestead Protection property.* The Agency will use an appraisal obtained within 6 months from the date of the application for considering homestead protection. If a current appraisal does not exist, the Agency will acquire an appraisal to determine the current market value of the homestead protection property.

§ 766.156 Conflict with State law.

If there is a conflict between a borrower's homestead protection rights and any provisions of State law relating to redemption rights, the State law prevails.

§§ 766.157–766.200 [Reserved]

Subpart E—Servicing Shared Appreciation Agreements and Net Recovery Buyout Agreements

§ 766.201 Shared Appreciation Agreement.

(a) *When a SAA is required.* The Agency requires a borrower to enter into a SAA with the Agency when the borrower:

(1) Owns any real estate that serves or will serve as loan security; and

(2) Accepts a writedown in accordance with § 766.111.

(b) *When SAA is due.* The borrower must repay the calculated amount of

shared appreciation after a term of 5 years from the date of the writedown, or earlier if:

(1) The borrower sells or conveys all or a portion of the Agency's real estate security, unless real estate is conveyed upon the death of a borrower to a spouse who will continue farming;

(2) The borrower repays or satisfies all FLP loans;

(3) The borrower ceases farming; or

(4) The Agency accelerates the borrower's loans.

§ 766.202 Determining the shared appreciation due.

(a) The value of the real estate security at the time of maturity of the SAA (current market value) shall be the appraised value of the security at the highest and best use, less the increase in the value of the security resulting from capital improvements added during the term of the SAA (contributory value). The current market value of the real estate security property will be determined based on a current appraisal obtained in accordance with § 761.7 of this chapter, and subject to the following:

(1) The borrower will identify any capital improvements that have been added to the property since the execution of the SAA.

(2) The appraisal must specifically identify the contributory value of capital improvements made to the Agency real estate security during the term of the SAA to make deductions for that value.

(3) For calculation of shared appreciation recapture, the remaining contributory value of capital improvements added during the term of the SAA will be deducted from the current market value of the property. Such capital improvements must also meet at least one of the following criteria:

(i) It is the borrower's primary residence. If the new residence is affixed to the real estate security as a replacement for a residence which existed on the security property when the SAA was originally executed, or, the living area square footage of the original residence was expanded, only the value added to the real property by the new or expanded portion of the original residence (if it added value) will be deducted from the current market value.

(ii) It is an improvement to the real estate with a useful life of over one year and is affixed to the property, the following conditions must be met:

(A) The item must have been capitalized and not taken as an annual operating expense on the borrower's Federal income tax returns. The borrower must provide copies of appropriate tax returns to verify that capital improvements claimed for shared appreciation recapture reduction are capitalized.

(B) If the new item is affixed to the real estate as a replacement for an item that existed on the real estate at the time the SAA was originally executed, only the value added by the new item will be deducted from the current market value.

(b) In the event of a partial sale, an appraisal of the property being sold may be required to determine the market value at the time the SAA was signed if such value cannot be obtained through another method.

§ 766.203 Payment of recapture.

(a) The borrower must pay on the due date or 30 days from Agency notification, whichever is later:

(1) Seventy-five percent of the appreciation in the real estate security if the agreement is triggered within four years or less from the date of the writedown; or

(2) Fifty percent of such appreciation if the agreement is triggered more than four years from the date of the writedown or when the agreement matures.

(b) If the borrower sells a portion of the security, the borrower must pay shared appreciation only on the portion sold. Shared appreciation on the remaining portion will be due in accordance with paragraph (a) of this section.

(c) The amount of recapture cannot exceed the amount of the debt written off through debt writedown.

§ 766.204 Amortization of recapture.

(a) The Agency will amortize the recapture into a Shared Appreciation Payment Agreement provided the borrower:

(1) Has not ceased farming and the borrower's account has not been accelerated;

(2) Provides a complete application in accordance with § 764.51(a), by the recapture due date or within 60 days of Agency notification of the amount of recapture due, whichever is later;

(3) Is unable to pay the recapture and cannot obtain funds from any other source;

(4) Develops a feasible plan that includes repayment of the shared appreciation amount;

(5) Provides a lien on all assets, except those listed in § 766.112(b); and

(6) Signs loan agreements and security instruments as required.

(b) If the borrower later becomes delinquent or financially distressed reamortization of the Shared Appreciation Payment Agreement can be considered under subpart C of this part.

§ 766.205 Shared Appreciation Payment Agreement rates and terms.

(a) The interest rate for Shared Appreciation Payment Agreements is the Agency's SA amortization rate.

(b) The term of the Shared Appreciation Payment Agreement is based on the borrower's repayment ability and the useful life of the security. The term will not exceed 25 years.

§ 766.206 Net Recovery Buyout Recapture Agreement.

(a) *Servicing existing Net Recovery Buyout Recapture Agreements.* Prior to July 3, 1996, the Agency was authorized to offer borrowers to buy out their loans at the net recovery value. A Net Recovery Buyout Agreement was required for borrowers who bought out their loans at the net recovery value. The Agency services existing Net Recovery Buyout Recapture Agreements as described in this section.

(b) *Requirements and terms.* (1) The term of a Net Recovery Buyout Recapture Agreement is 10 years. Net Recovery Buyout Recapture Agreements are secured by a lien on the former borrower's real estate.

(2) If the former borrower sells or conveys real estate within the 10-year term, the former borrower must repay the Agency the lesser of:

(i) The fair market value of the real estate parcel at the time of sale or conveyance, as determined by an Agency appraisal, minus the portion of the recovery value of the real estate paid to the Agency in the buyout;

(ii) The fair market value of the real estate parcel at the time of the sale or conveyance, as determined by an Agency appraisal, minus:

(A) The unpaid balance of prior liens at the time of the sale or conveyance; and

(B) The net recovery value of the real estate the borrower paid to the Agency in the buyout if this amount has not been accounted for as a prior lien;

(iii) The total amount of the FLP debt the Agency wrote off for loans secured by real estate.

(3) If the former borrower does not pay the amount due, the Agency will liquidate the Net Recovery Buyout account in accordance with subpart H of this part.

(4) If the former borrower does not sell or convey the real estate within the 10 year term, no recapture is due.

§§ 766.207–766.250 [Reserved]

Subpart F—Unauthorized Assistance

§ 766.251 Types of unauthorized assistance.

(a) *Unauthorized loan.* An unauthorized loan is any loan, portion of a loan, interest rate, or interest subsidy that was not processed and approved in accordance with all Agency procedures and requirements.

(b) *Unauthorized loan servicing action.* An unauthorized loan servicing action is any servicing action not made in accordance with all Agency procedures and requirements.

§ 766.252 Repayment of unauthorized assistance.

(a) Except where specified otherwise, the borrower is responsible for repaying any unauthorized assistance in full within 90 days of Agency notice.

(b) The borrower has the opportunity to meet with an Agency representative to discuss or refute the Agency's findings.

§ 766.253 Unauthorized assistance resulting from submission of false or incomplete information.

A borrower is ineligible for continued Agency assistance if the borrower, or a third party on the borrower's behalf, submits information to the Agency that the borrower knows to be incomplete or false.

§ 766.254 Unauthorized assistance resulting from borrower or Agency error.

(a) *Borrower options.* (1) The borrower may repay the amount of the unauthorized assistance in a lump sum within 90 days of Agency notice.

(2) If the borrower is unable to repay the entire amount in a lump sum, the Agency will accept partial repayment of the unauthorized assistance within 90 days of Agency notice to the extent of the borrower's ability to repay. Any remaining balance will be handled in accordance with paragraph (a)(3) of this section.

(3) If the borrower is unable to repay all or part of the unauthorized amount, the Agency will enter into an accelerated repayment agreement with the borrower for such amount under the following conditions:

(i) The borrower did not intentionally provide incomplete or false information;

(ii) Such agreement is in the best financial interest of the Government;

(iii) The debt under the repayment agreement will be subject to the interest rate for Non-program loans;

(iv) The term of the repayment agreement will be as short as feasible, but in no case will exceed:

(A) The remaining term of the FLP loan;

(B) Twenty-five (25) years for real estate loans;

(C) The life of the security for chattel loans.

(v) The debt under the repayment agreement will be serviced as a Non-program loan.

(b) *Borrower refusal to pay.* If the borrower is able to pay the unauthorized assistance amount but refuses to do so, the Agency will notify the borrower of the availability of loan servicing in accordance with subpart C of this part.

§§ 766.255–766.300 [Reserved]

Subpart G—Bankruptcy

§ 766.301 Notifying borrower in bankruptcy of loan servicing.

If a borrower files for bankruptcy, the Agency will provide written notification to the borrower's attorney with a copy to the borrower as follows:

(a) *Borrower not previously notified.* The Agency will provide notice of all loan servicing options available under subpart C of this part, if the borrower has not been previously notified of these options.

(b) *Borrower with prior notification.* If the borrower had received monetary or non-monetary notification at the time of bankruptcy filing but all loan servicing was not completed, the Agency will provide notice of any remaining loan servicing options available under subpart C of this part.

§ 766.302 Loan servicing application requirements for borrowers in bankruptcy.

(a) *Borrower not previously notified.* To be considered for loan servicing, the borrower or borrower's attorney must sign and return the appropriate response form and any forms or information requested by the Agency within 60 days of the date of receipt of Agency notice on loan servicing options.

(b) *Borrower previously notified.* To be considered for continued loan servicing, the borrower or borrower's attorney must sign and return the appropriate response form and any forms or information requested by the Agency within the greater of:

(1) Sixty days after the borrower's attorney received the notification of any remaining loan servicing options; or

(2) The remaining time from the Agency's previous monetary or non-monetary notification of all servicing options that the Agency suspended when the borrower filed bankruptcy.

(c) *Court approval.* The borrower is responsible for obtaining court approval prior to exercising any available servicing rights.

§ 766.303 Processing loan servicing requests from borrowers in bankruptcy.

(a) *Considering borrower requests for servicing.* Any request for servicing is the borrower's acknowledgment that the Agency will not interfere with any rights or protections under the Bankruptcy Code and its automatic stay provisions.

(b) *Borrowers with confirmed bankruptcy plans.* If a plan is confirmed before servicing and any appeal is completed under 7 CFR part 11, the Agency will complete the servicing or appeals process and may consent to a post-confirmation modification of the plan if it is consistent with the Bankruptcy Code and subpart C of this part, as appropriate.

(c) *Chapter 7 borrowers.* A borrower filing for bankruptcy under chapter 7 of the Bankruptcy Code may not receive primary loan servicing unless the borrower reaffirms the entire Agency debt. A chapter 7 borrower does not have to reaffirm the debt in order to be considered for homestead protection.

§§ 766.304–766.350 [Reserved]

Subpart H—Loan Liquidation

§ 766.351 Liquidation.

(a) *General.* (1) When a borrower cannot or will not meet a loan obligation, the Agency will consider liquidating the borrower's account in accordance with this subpart.

(2) The Agency will charge protective advances against the borrower's account as necessary to protect the Agency's interests during liquidation in accordance with § 765.203 of this chapter.

(3) The Agency considers liquidation in accordance with paragraph (b) of this section, if a borrower has both Program and Non-program loans.

(4) When no surviving family member or third party assumes or repays a deceased borrower's loan in accordance with part 765, subpart J, of this chapter, or when the estate does not otherwise fully repay or sell loan security to repay a deceased borrower's Agency loans, the Agency will liquidate the security as quickly as possible in accordance with State and local requirements.

(b) *Liquidation for Program borrowers.* (1) If the borrower does not apply, does not accept, or is not eligible for primary loan servicing, conservation contract, market value buyout or homestead protection, and all administrative appeals are concluded, the Agency will accelerate the borrower's account in accordance with § 766.355.

(2) Borrowers may voluntarily liquidate their security in accordance with §§ 766.352, 766.353 and 766.354.

(i) The Agency will not delay involuntary liquidation action.

(ii) If the conditions of (b)(1) of this section have not been met, the Agency will notify the borrower in accordance with subpart C of this part, prior to acting on the request for voluntary liquidation.

(c) *Liquidation for Non-program borrowers.* If a borrower has both Program and Non-program loans, the borrower's account will be handled in accordance with paragraph (b) of this section. If a borrower with only Non-program loans is in default, the borrower may liquidate voluntarily, subject to the following:

(1) The Agency may delay involuntary liquidation actions when in the Agency's best financial interest for a period not to exceed 60 days.

(2) The borrower must obtain the Agency's consent prior to the sale of the property.

(3) If the borrower will not pay the Agency in full, the minimum sales price must be the current market value of the property as determined by the Agency.

(4) The Agency will accept a conveyance offer only when it is in the Agency's best financial interest.

(5) If a Non-program borrower does not cure the default, or cannot or will not voluntarily liquidate, the Agency will accelerate the loan.

§ 766.352 Voluntary sale of real property and chattel.

(a) *Conditions for voluntary sale of real property and chattel.* A borrower may voluntarily sell real property or chattel to repay Agency debt in lieu of involuntary liquidation. Partial dispositions are handled in accordance with part 765, subparts G and H of this chapter.

(1) The borrower must sell all real property and chattel that secure Agency debt until the debt is paid in full or until all security has been liquidated.

(2) The Agency must approve the sale and approve the use of proceeds.

(3) The sale proceeds are applied in order of lien priority, except that proceeds may be used to pay customary costs appropriate to the transaction as follows:

(i) The costs must be reasonable in amount;

(ii) The borrower cannot arrange to pay the costs from personal funds or cannot have the purchaser pay;

(iii) The costs must be paid to consummate the transaction;

(iv) When it is necessary for the Agency to present the promissory note to the recorder to obtain a release of a portion of the real property from the mortgage, the borrower must pay any cost for postage and insurance of the note while in transit.

(4) The Agency will approve the sale of property when the proceeds do not cover the borrower's full debt only if:

(i) The sales price must be equal to or greater than the market value of the property; and

(ii) The sale is in the Agency's best financial interest.

(5) If an unpaid loan balance remains after the sale, the Agency will continue to service the loan in accordance with 7 CFR part 792.

(b) *Voluntary sale of chattel.* If the borrower complies with paragraph (a) of this section, the borrower may sell chattel security by:

(1) *Public sale.* The borrower must obtain the agreement of lienholders as necessary to complete a public sale; or

(2) *Private sale.* The borrower may sell chattel security at a private sale if the borrower:

(i) Sells all of the security for not less than the current market value;

(ii) Obtains the agreement of lienholders as necessary to complete the sale;

(iii) Has a buyer who is ready and able to purchase the property; and

(iv) The Agency agrees to the sale.

§ 766.353 Voluntary conveyance of real property.

(a) *Requirements for conveying real property.* The following requirements must be satisfied before the Agency will accept a conveyance.

(1) The borrower must supply the Agency with the following:

(i) An Agency application form;

(ii) A current financial statement. If the borrower is an entity, all entity members must provide current financial statements;

(iii) Information on present and future income and potential earning ability;

(iv) A warranty deed or other deed acceptable to the Agency;

(v) In the case of an entity, a resolution approved by the governing body that authorizes the conveyance;

(vi) Assignment of all leases to the Agency. The borrower must put all oral leases in writing;

(vii) Title insurance or title record for the security, if available;

(viii) Complete debt settlement application in accordance with 7 CFR part 792 before or in conjunction with the voluntary conveyance offer if the value of the property to be conveyed is less than the debt; and

(ix) Any other documentation required by the Agency to evaluate the request.

(2) The Agency will have the property appraised to determine its current market value.

(b) *Conditions for conveying real property.* The Agency will accept voluntary conveyance of real property by a borrower if:

(1) Conveyance is in the Agency's best financial interest;

(2) The borrower conveys all real property securing the Agency loan; and

(3) The borrower has received prior notification of the availability of loan servicing in accordance with subpart C of this part.

(c) *Prior and junior liens.* (1) The Agency will pay prior liens to the extent consistent with the Agency's best financial interest.

(2) Before conveyance, the borrower must pay or obtain releases of all junior liens, real estate taxes, judgments, and other assessments.

(d) *Charging and crediting the borrower's account.* (1) The Agency will charge the borrower's account for all recoverable costs incurred in connection with a conveyance in accordance with § 765.203 of this chapter.

(2) The Agency will credit the borrower's account for the amount of the market value of the property less any prior liens, or the debt, whichever is less. In the case of a Native American borrower whose loans are secured by real estate located within the boundaries of a Federally recognized Indian reservation, however, the Agency will credit the borrower's account at the greater of the market value of the security or the borrower's Agency debt.

§ 766.354 Voluntary conveyance of chattel.

(a) *Requirements for conveying chattel.* The borrower must supply the Agency with the following:

(1) An Agency application form;

(2) A current financial statement. If the borrower is an entity, all entity members must provide current financial statements;

(3) Information on present and future income and potential earning ability;

(4) A bill of sale including each item and titles to all vehicles and equipment, as applicable;

(5) In the case of an entity, a resolution approved by the governing body that authorizes the conveyance;

(6) Complete debt settlement application in accordance with 7 CFR part 792 before or in conjunction with the voluntary conveyance offer if the value of the property to be conveyed is less than the debt.

(b) *Conditions for conveying chattel.* The Agency will accept conveyance of chattel only if:

(1) The borrower has made every possible effort to sell the property voluntarily;

(2) The borrower can convey the chattel free of other liens;

(3) The conveyance is in the Agency's best financial interest;

(4) The borrower conveys all chattel securing the Agency loan; and

(5) The borrower has received prior notification of the availability of loan servicing in accordance with subpart C of this part.

(c) *Charging and crediting the borrower's account.* (1) The Agency will charge the borrower's account for all recoverable costs incurred in connection with the conveyance in accordance with § 765.203 of this chapter.

(2) The Agency will credit the borrower's account in the amount of the market value of the chattel.

§ 766.355 Acceleration of loans.

(a) *General.* (1) The Agency accelerates loans in accordance with this section, unless State law imposes separate restrictions on accelerations.

(2) The Agency accelerates all of the borrower's loans at the same time, regardless of whether each individual loan is delinquent or not.

(3) All borrowers must receive prior notification in accordance with subpart C of this part, except for borrowers who fail to graduate in accordance with § 766.101(a)(7).

(b) *Time limitations.* The borrower has 30 days from the date of the Agency acceleration notice to pay the Agency in full.

(c) *Borrower options.* The borrower may:

(1) Pay cash;

(2) Transfer the security to a third party in accordance with part 765, subpart I of this chapter;

(3) Sell the security property in accordance with § 766.352; or

(4) Voluntarily convey the security to the Agency in accordance with §§ 766.353 and 766.354.

(d) *Partial payments.* The Agency may accept a payment that does not cover the unpaid balance of the accelerated loan if the borrower is in the process of selling security, unless acceptance of the payment would reverse the acceleration.

(e) *Failure to satisfy the debt.* The Agency will liquidate the borrower's account in accordance with § 766.356 if the borrower does not pay the account in full within the time period specified in the acceleration notice.

§ 766.356 Involuntary liquidation of real property and chattel.

(a) *General policy.* The Agency will liquidate the borrower's security if:

(1) The borrower does not satisfy the account in accordance with § 766.355;

(2) The Agency can obtain a positive recovery on a loan; and

(3) The involuntary liquidation is in the Agency's best financial interest.

(b) *Foreclosure on loans secured by real property.* (1) The Agency will charge the borrower's account for all recoverable costs incurred in connection with the foreclosure and sale of the property in accordance with § 765.203.

(2) If the Agency acquires the foreclosed property, the Agency will credit the borrower's account in the amount of the market value of the property less the amount of any prior liens on the date of acquisition.

(3) If the Agency does not acquire the foreclosed property, the Agency will credit the borrower's account in accordance with State law and guidance from the Regional OGC.

(4) For a Native American borrower whose real property secures an Agency loan and is located within the confines of a Federally recognized Indian reservation, the Agency will credit the borrower's account in the amount that is the greater of:

(i) The market value of the security; or

(ii) The amount of the Agency debt against the property.

(5) If an unpaid balance on the Agency loan remains after the foreclosure sale of the property, the Agency may debt settle the account in accordance with 7 CFR part 792.

(c) *Foreclosure of loans secured by chattel.* (1) The Agency will charge the borrower's account for all recoverable costs incurred by the Agency as a result of the repossession and sale of the property.

(2) The Agency will apply the proceeds from the repossession sale to the borrower's account less prior liens and all authorized liquidation costs.

(3) If an unpaid balance on the Agency loan remains after the sale of the repossessed property, the Agency may debt settle the account in accordance with 7 CFR part 792.

§§ 766.357–766.400 [Reserved]

Subpart I—Exception Authority

§ 766.401 Agency exception authority.

On an individual case basis, the Agency may consider granting an exception to any regulatory requirement or policy of this part if:

(a) The exception is not inconsistent with the authorizing statute or other applicable law; and

(b) The Government's financial interest would be adversely affected by acting in accordance with published regulations or policies and granting the exception would resolve or eliminate the adverse effect upon the Government's financial interest.

§§ 766.402–766.450 [Reserved]

Appendix A to Subpart C of Part 766—Notice of Availability of Loan Servicing to Borrowers Who Are Current or Less Than 90 Days Past Due

FSA 2501

Notice of Availability of Loan Servicing to Borrowers Who Are Current or Less Than 90 Days Past Due

Dear (Borrower's Name)

This notice informs you of servicing options that may be available to financially distressed borrowers or borrowers less than 90 days past due. The Agency's primary loan servicing programs, Conservation Contract Program, Homestead Protection Program, and debt settlement programs may help you resolve your financial distress, repay your loan, retain your farm property or settle your Farm Loan Programs (FLP) debt.

How To Apply

To apply, you must complete, where applicable, and provide all items required in paragraph (e).

Help in Responding to This Notice

The servicing options available to you may become complicated. You may need help to understand them and their impact on your operation. You may want to ask an attorney to help you or there are organizations that give free or low-cost advice to farmers. You may contact your State Department of Agriculture or the USDA Extension Service for available services in your State.

Note: Agency employees cannot recommend a particular attorney or organization.

Who Will Decide if You Qualify?

After you submit a complete application, the Agency will determine if you meet all eligibility requirements and can develop a farm operating plan which shows that you can pay all debts and expenses.

What Happens if You Do Not Apply or Do Not Resolve Your Delinquency?

If you do not timely apply to this notice, or you do not resolve your delinquency, and you become 90 days past due on your loans, the Agency will notify you of available loan servicing by sending you FSA 2503, ''Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due.''

Included with this notice you will find information on:

(a) Primary loan servicing programs;

(b) Conservation Contract Program;

(c) Homestead Protection Program;

(d) Debt settlement programs;

(e) Forms, documentation, and information needed to apply;

(f) How to get copies of the Agency's handbooks and forms;

(g) Reconsideration, mediation, negotiation and appeal rights;

(h) The right not to be discriminated against.

(a) Primary Loan Servicing Programs

Eligibility

You must meet the following eligibility requirements to obtain primary loan servicing:

(a) You are financially distressed due to circumstances beyond your control which reduced your repayment ability to the extent that scheduled payments cannot be made as a result of one the following circumstances:

(1) Illness, injury, or death of a borrower or other individual who operates the farm;

(2) Natural disaster, adverse weather, disease, or insect damage which caused severe loss of agricultural production;

(3) Widespread economic conditions such as low commodity prices;

(4) Damage or destruction of property essential to the operation; or

(5) Loss of, or reduction in, your or your spouse's essential non-farm income.

(b) You do not have non-essential assets for which the net recovery value is sufficient to resolve your financial distress. The Agency cannot write down debt that you could pay with the value of your equity in these assets.

(c) If you are in non-monetary default as a result of noncompliance with the Agency's loan agreements, you must resolve the non-monetary default prior to closing the servicing action.

(d) You must have acted in good faith in accordance with your loan agreements.

Time Limits

If the Agency determines that you are eligible for primary loan servicing and can develop a feasible plan, you will have 45 days from notice to accept the Agency's offer for loan servicing.

Lien requirements

If you are offered loan servicing and accept the offer, you must agree to give the Agency a lien on your other assets and you must provide this lien at closing.

Payment of interest

You must pay a portion of the interest that has accrued on your loans prior to closing the servicing action.

Loan consolidation

The unpaid principal and interest of two or more operating loans can be combined into one larger operating loan. When loans are consolidated, the interest rate will be the lesser of:

(1) the lowest interest rate for that type of loan on the date a complete servicing application was received;

(2) the lowest interest rate for that type of loan on the date of restructure; or

(3) the lowest original loan note rate on any of the original notes being consolidated.

In addition, the Agency will consider the maximum loan terms.

Loan rescheduling

The repayment schedule may be changed to cure the financial distress or delinquency and give you new terms to repay loans made for equipment, livestock, or annual operating purposes. When loans are rescheduled, the interest rate will be the lesser of:

(1) the lowest interest rate for that type of loan on the date a complete servicing application was received;

(2) the lowest interest rate for that type of loan on the date of restructure; or

(3) the lowest original loan note rate on any of the original notes being rescheduled.

In addition, the Agency will consider the maximum loan terms.

Loan reamortization

The repayment schedule may be changed to cure the financial distress or delinquency and give you a new schedule of repayment on loans made for real estate purposes. When loans are reamortized, the interest rate will be the lesser of:

(1) the lowest interest rate for that type of loan on the date a complete servicing application was received;

(2) the lowest interest rate for that type of loan on the date of restructure; or

(3) The original loan note rate of the note being reamortized.

In addition, the Agency will consider the maximum loan terms.

Limited Resource Interest Rate

Limited resource interest rates are available for certain types of loans. If you have existing loans which are not at the limited resource rate, and a limited resource rate is available, the Agency will consider reducing the rate of the loans. The limited resource interest rate can be as low as 5 percent, however, this rate may change depending on what it costs the Government to borrow money.

For information about current interest rates, contact this office.

Loan Deferral

Partial or full payments of principal and interest may be temporarily delayed for up to five years. You will only be considered for loan deferral if the loan servicing programs discussed above will not allow you to pay all essential family living and farm operating expenses, maintain your property, and pay your debts.

You must be able to show through a farm operating plan that you are unable to pay all essential family living and farm operating expenses, maintain your property, and pay your debts. The farm operating plan must also show that you will be able to pay your full installment at the end of the deferral period.

The interest that accrues during the deferral period must be paid in yearly payments for the rest of the loan term after the deferral period ends.

Debt Writedown

Debt writedown can reduce the principal and interest on your loan. The Agency offers a writedown only when the loan servicing programs discussed above and the Conservation Contract Program will not result in a feasible plan. To receive debt writedown, the value of your restructured loan must be equal to or greater than the recovery value to the Agency from foreclosure and repossession of your security property.

The recovery value is the market value of:

(1) The collateral pledged as security for your FLP loans minus expenses (such as the sale costs, attorneys' fees, management costs, taxes, and payment of prior liens) on the collateral that the Agency would have to pay if it foreclosed, or repossessed, and sold the collateral;

(2) Any collateral that is not in your possession and has not been released for sale by the Agency in writing; and

(3) Any other non-essential assets you may own.

A qualified appraiser determines the value of the collateral and any other assets you own. You may receive a writedown only if you have not previously received any form of debt forgiveness on any other FLP direct loan. The maximum amount of debt that can be written down on all direct loans is $300,000.

Shared Appreciation Agreement

If you own real estate and receive a debt writedown, you must sign a Shared Appreciation Agreement. The term of the agreement is five years. Under the terms of the agreement you must repay all or a part of the amount written down at the maturity of your Shared Appreciation Agreement if your real estate collateral increased in value. Payment of shared appreciation will be required prior to the maturity of your Shared Appreciation Agreement if you:

(1) Sell or convey the real estate;

(2) Stop farming;

(3) Pay off your entire FLP debt; or

(4) Have your FLP accounts accelerated by the Agency.

If any of these events occur within the first four years of the agreement, you will have to pay 75 percent of the increase in value of the real estate. If any of these events occur after the fourth anniversary of the agreement, or if the Shared Appreciation Agreement matures without having previously been fully triggered, you will have to pay only 50 percent of the increase in value. You will not have to pay more than the amount of the debt written down.

(b) Conservation Contract Program

You may request a Conservation Contract to protect highly erodible land, wetlands, or wildlife habitats located on your real estate property that serves as security for your FLP debt. In exchange for such contract, the Agency would reduce your FLP debt. The amount of land left after the contract must be sufficient to continue your farming operation.

(c) Homestead Protection Program

Under the Homestead Protection Program, you may repurchase your primary residence, certain outbuildings, and up to 10 acres of land. If you cannot pay cash or Agency financing is not available, you may lease your primary residence. The lease will include an option for you to purchase the property you lease.

This program may apply when primary loan servicing or the Conservation Contract Program are not available or are not accepted.

You must agree to give the Agency title to your land at the time the Agency signs the homestead protection agreement with you. The Agency will compute the costs of taking title including the cost of paying other creditors who have outstanding liens on the

property. The Agency will take title only if it can obtain a positive recovery.

Eligibility Requirements

(1) Your gross annual income from the farming operation must have been similar to other comparable operations in your area in at least two of the last six years.

(2) Sixty percent (60%) of your gross annual income in at least two of the last six years must have come from the farming operation.

(3) You must have lived in your homestead property for six years immediately before your application. If you had to leave for less than 12 months during the 6-year period and you had no control over the circumstances, you may still qualify.

(4) You must be the owner of the property immediately prior to the Agency obtaining title.

Property Restrictions and Easements

The Agency may place restrictions or easements on your property which restrict your use if the property is located in a special area or has special characteristics. These restrictions and easements will be placed in leases and in deeds on properties containing wetlands, floodplains, endangered species, wild and scenic rivers, historic and cultural properties, coastal barriers, and highly erodible lands.

Leasing the Homestead Property

(1) You must pay rent to the Agency to lease the property determined eligible for homestead protection. The rent the Agency charges will be similar to comparable property in your area.

(2) You must maintain the property in good condition during the term of the lease.

(3) You may lease the property for up to five years but no less than three years.

(4) You cannot sublease the property.

(5) If you do not make the rental payments to the Agency, the Agency will cancel the lease and take legal action to force you to leave.

(6) Lease payments are not applied toward the final purchase price of the property.

Purchasing the Homestead Protection Property

You can repurchase your homestead property at market value at any time during the lease. The market value of the property will be decided by a qualified appraiser and will reflect the value of the land after any placement of a restriction or easement such as a wetland conservation easement.

(d) Debt Settlement Programs

You can apply for debt settlement at any time; however, these programs are usually used only after it has been determined that primary loan servicing programs and Conservation Contract cannot help you. Under the debt settlement programs, the debt you owe the Agency under FLP may be settled for less than the amount you owe. These programs are subject to the discretion of the Agency and are not a matter of entitlement or right.

Settlement Alternatives

Settlement alternatives include:

(1) Compromise: A lump-sum payment of less than the total FLP debt owed;

(2) Adjustment: Two or more payments of less than the total amount owed to the Agency. Payments can be spread out over a maximum of five years if the Agency determines you will be able to make the payments as they become due; and

(3) Cancellation: Satisfaction of Agency debt without payment.

Note: The Agency will not finance these alternatives.

Processing and Requirements

If you sell loan collateral, you must apply the proceeds from the sale to your FLP loans before you can be considered for debt settlement. In the case of compromise or adjustment you may keep your collateral, if you pay the Agency the market value of your collateral along with any additional amount the Agency determines you are able to pay. Debt amounts which are collectible through administrative offset, judgment, or by the Department of the Treasury will not be settled through debt settlement procedures. You must certify that you do not have assets or income in addition to what you stated in your application. If you qualify, your application must also be approved by the State Executive Director or the Administrator, depending on the amount of the debt to be settled.

(e) Forms, Documentation, and Information Needed To Apply

A complete application for primary loan servicing must include items 1 through 9. Additional information is required as noted if you want to be considered for the Conservation Contract Program or for debt settlement programs. If you need help to complete the required forms, you may request an Agency official to assist you. The forms for requirements (1) through (6) and (10) are included with this package.

(1) FSA 2502, ''Acknowledgment of Available Loan Servicing—Less Than 90 Days Past Due.'' All individuals and entities liable for the FLP debt must sign FSA 2502 to request servicing.

(2) FSA 410–1, ''Application for Agency Services.'' In the case of an entity borrower, all entity members must provide current financial statements.

(3) FSA 431–2, ''Farm and Home Plan,'' or other acceptable plan of operation.

(4) FSA 440–32, ''Request for Statement of Debts and Collateral.'' Complete the name and address of the creditor, account number, if applicable, and your name. All parties liable to the creditor must sign and date the form. The Agency will mail this form to the creditor to obtain the needed information. Any debts less than $1,000 can be verified by a credit report. If debts of $1,000 or more appear on your credit report and no FSA 440–32 is supplied to the Agency to mail to the creditor within the 60-day time period, the application cannot be considered complete.

(5) RD 1910–5, ''Request for Verification of Employment.'' If you have non-farm income, you must complete employer's name and address, employee's name and address, social security number, sign and date the form. The Agency will send the form to your employer to obtain the needed information.

(6) FSA 1960–12, ''Financial and Production Farm Analysis Summary.'' Complete the form or another similar worksheet to provide production and expense history for crops, livestock, livestock products, etc., for each of the three years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. You must be able to support this information with farm records.

(7) AD–1026, ''Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification.'' You will be required to complete this form if the one you have on file does not reflect all the land you own and lease.

(8) SCS–CPA–026, ''Highly Erodible Land and Wetland Conservation Determination.'' This form must be obtained from and completed by the Natural Resources Conservation Service office, if not already on file with the Agency.

(9) Copies of your income tax records and any supporting documents for the last three years immediately preceding the year of application. If your copies of tax records are not readily available, you can obtain copies from the Internal Revenue Service.

(10) RD 1956–1, ''Application for Settlement of Indebtedness.'' Complete this form only if you wish to apply for debt settlement. You must also comply with any Agency request for additional information needed to process a debt settlement request.

(11) If you are applying for a Conservation Contract a map or aerial photo of your farm identifying the portion of the land and approximate number of acres to be considered.

Divorced Spouses

If you are an FLP obligor who has left the farm operation due to divorce, you may request release of liability. To be released of liability after a divorce, you must present the Agency with the following within 60 days of receiving this notice:

(1) A divorce decree or property settlement document which states the remaining party will be responsible for all repayment to the Agency;

(2) Evidence that you have conveyed your ownership interest in FLP security to the remaining party; and

(3) Evidence that you do not have any repayment ability for the FLP loan through cash, income, or other non-essential assets.

The Agency will make a determination on your request and will inform you of the decision within 60 days of receiving your request.

If you are not released of liability, you will need to include all of your relevant financial information if applying for primary loan servicing, homestead protection, or debt settlement program.

(f) How To Get Copies of Agency Handbooks and Forms

Copies of the forms for requirements (e)(1) through (e)(6) and (e)(10) have been included in this notice. You may obtain copies of Agency handbooks describing available

programs or additional copies of forms from this office.

(g) Reconsideration, Mediation, Negotiation, and Appeal Rights

Reconsideration, mediation, negotiation, and appeal rights will be provided to you if the Agency makes an adverse decision on your request for loan servicing or prior to acceleration of your FLP account. These options will be provided when required to insure that you are given the reasons for the Agency decision and complete information on how you may request any of these options.

Reconsideration

If you are determined by the Agency to be ineligible for loan servicing, or if you cannot develop a feasible plan, you may request a reconsideration meeting with the Agency decision maker. You must request reconsideration within 30 days of the date you receive the adverse decision. At a reconsideration meeting, you may present additional information to the decision maker and explain why you believe the adverse decision to be in error. If the meeting does not change the Agency decision, you will be notified and provided 30 days to request mediation, negotiation, or appeal as outlined below.

Mediation

Mediation is a process for resolution of a disagreement. A trained neutral mediator assists two or more parties in dispute to look at the issues, consider all available options, and attempt to agree on an acceptable solution. If your State has a mediation program approved by the USDA, the Agency will participate in mediation. If there is no State mediation program, the Agency may help you to set up a meeting with your other creditors. If you wish to request mediation, you must make such request within 30 days of your receipt of an adverse Agency decision. If you request mediation prior to requesting an appeal, the 30-day time period for requesting an appeal will be temporarily suspended. If mediation fails to resolve your dispute with the Agency, only the balance of the 30 days will remain to request an appeal.

Negotiation of the Appraisal

If you timely submit a complete application for primary loan servicing, but disagree with the appraisal used by the Agency for processing your primary loan servicing request, you will have 30 days to obtain, at your own expense, an independent appraisal which conforms to published Agency appraisal standards. If this independent appraised value is within 5 percent of the value of the Agency appraisal, you must choose one of these two appraisals for the Agency to use to continue processing your request. If the appraisals differ by more than 5 percent, you may request a third appraisal for which you must pay half of the cost, and the average of the two appraisals closest in value is taken as the final appraised value to be used in considering your request. If you wish to request both negotiation and mediation, these should be requested at the same time so the negotiation of the appraisal can be concluded prior to mediation. If not requested at the same time, negotiation of the appraisal must be requested first. Negotiated appraisals are not appealable but other issues can still be appealed after negotiation. If you request negotiation of the appraisal prior to requesting an appeal, the 30-day time period for requesting an appeal will be temporarily suspended. If negotiation of the appraisal fails to resolve your dispute with the Agency, only the balance of the 30-day time frame will remain to request an appeal on issues other than the negotiated appraisal.

Appeal

Appeal is a process under which you present evidence to USDA's National Appeals Division which shows that the Agency's adverse decision is wrong. Subject to the deadline suspensions discussed above, your request for an appeal must be postmarked no later than 30 days from the date you received the Agency's adverse decision.

(h) The Right Not To Be Discriminated Against

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

USDA regulations prohibit discrimination in USDA programs because of your race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, disability; because all or part of your income is derived from any public assistance program; or because you have filed a program complaint, participated in any program complaint proceeding, or opposed a prohibited practice.

If you believe that you have been discriminated against for any of the reasons stated above, you may file a complaint with the Director, Office of Civil Rights, United States Department of Agriculture, Room 326–W, Whitten Building, 1400 Independence Avenue SW., Washington, DC 20250–9410.

The servicing programs described by this Notice are subject to applicable Agency regulations published at 7 CFR part 766.

For more information, please contact this office.

Title
Office Address
Telephone number

Appendix B to subpart C of part 766—Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due

FSA 2503

Notice of Availability of Loan Servicing to Borrowers Who are 90 Days Past Due

Dear (Borrower's Name)

This notice informs you that you are seriously delinquent with your Farm Loan Programs (FLP) loan payment and notifies you of options that may be available to you. The Agency's primary loan servicing programs, Conservation Contract Program, current market value buyout, Homestead Protection Program, and debt settlement programs may help you repay your loan and retain your farm property or settle your FLP debt.

How to apply

To apply, you must complete, where applicable, and provide all items required in paragraph (f), within *60 days* of the date you receive this notice.

Help in responding to this notice

The servicing options available to you may become complicated. You may need help to understand them and their impact on your operation. You may want to ask an attorney to help you or there are organizations that give free or low-cost advice to farmers. You may contact your State Department of Agriculture or the USDA Extension Service for available services in your State.

Note: Agency employees cannot recommend a particular attorney or organization.

Who will decide if you qualify?

After you submit a complete application, the Agency will determine if you meet all eligibility requirements and can develop a farm operating plan which shows that you can pay all debts and expenses.

What happens if you do not bring the account current or apply within 60 days?

The Agency will accelerate your loan if you do not bring the FLP account current or timely apply for loan servicing. This means the Agency will take legal action to collect all the money you owe to the Agency under FLP. After acceleration of your loan accounts, the Agency will start foreclosure proceedings. The Agency will repossess or take legal action to sell your real estate, personal property, crops, livestock, equipment, or any other assets in which the Agency has a security interest. The Agency will stop all releases of the proceeds from Agency security including, but not limited to, releases of your crops, livestock and milk. The Agency will take, by administrative offset, money or other program benefits which FSA or other Federal Agencies owe you. The Agency will also obtain and file judgments against you and your property or refer your account to the Department of the Treasury for collection.

Included with this notice you will find information on:

(a) Primary loan servicing programs;
(b) Conservation Contract Program;
(c) Current market value buyout;
(d) Homestead Protection Program;
(e) Debt settlement programs;
(f) Forms, documentation, and information needed to apply;
(g) How to get copies of Agency handbooks and forms;
(h) Reconsideration, mediation, negotiation, and appeal rights;

(i) Acceleration and foreclosure;

(j) The right not to be discriminated against.

(a) Primary Loan Servicing Programs

Eligibility

You must meet the following eligibility requirements to obtain primary loan servicing:

(a) You cannot repay your FLP debt due to circumstances beyond your control which reduced your repayment ability to the extent that scheduled payments cannot be made as a result of one of the following circumstances:

(1) Illness, injury, or death of a borrower or another individual who operates the farm;

(2) Natural disaster, adverse weather, disease, or insect damage which caused severe loss of agricultural production;

(3) Widespread economic conditions such as low commodity prices;

(4) Damage or destruction of property essential to the operation; or

(5) Loss of, or reduction in, your or your spouse's essential non-farm income.

(b) You do not have non-essential assets for which the net recovery value is sufficient to pay the delinquent portion of the loan. The Agency cannot reduce or write off debt that you could pay with the value of your equity in these assets.

(c) If you are in non-monetary default as a result of noncompliance with the Agency's loan agreements, you must resolve the non-monetary default prior to closing the servicing action.

(d) You must have acted in good faith in accordance with your loan agreements.

Time Limits

If the Agency determines that you can develop a feasible plan and are eligible for primary loan servicing, you will have 45 days from the date you receive the Agency's offer to accept loan servicing.

Lien Requirements

If you are offered loan servicing and accept the offer, you must agree to give the Agency a lien on your other assets and you must provide this lien at closing.

Loan Consolidation

The unpaid principal and interest of two or more operating loans can be combined into one larger operating loan. When loans are consolidated, the interest rate will be the lesser of:

(1) The lowest interest rate for that type of loan on the date a complete servicing application was received;

(2) The lowest interest rate for that type of loan on the date of restructure; or

(3) The lowest original loan note rate on any of the original notes being consolidated.

In addition, the Agency will consider the maximum loan terms.

Loan Rescheduling

The repayment schedule may be changed to cure the financial distress or delinquency and give you new terms to repay loans made for equipment, livestock, or annual operating purposes. When loans are rescheduled, the interest rate will be the lesser of:

(1) The lowest interest rate for that type of loan on the date a complete servicing application was received;

(2) The lowest interest rate for that type of loan on the date of restructure; or

(3) The lowest original loan note rate on any of the original notes being rescheduled.

In addition, the Agency will consider the maximum loan terms.

Loan Reamortization

The repayment schedule may be changed to cure the financial distress or delinquency and give you a new schedule of repayment on loans made for real estate purposes. When loans are reamortized, the interest rate will be the lesser of:

(1) The lowest interest rate for that type of loan on the date a complete servicing application was received;

(2) The lowest interest rate for that type of loan on the date of restructure; or

(3) The original loan note rate of the note being reamortized.

In addition, the Agency will consider the maximum loan terms.

Limited Resource Interest Rate

Limited resource interest rates are available for certain types of loans. If you have existing loans which are not at the limited resource rate, but a limited resource rate is available, the Agency will consider reducing the rate of the loans. The limited resource interest rate can be as low as 5 percent, however, this rate may change depending on what it costs the Government to borrow money.

For information about current interest rates, contact this office.

Loan Deferral

Partial or full payments of principal and interest may be temporarily delayed for up to five years. You will only be considered for loan deferral if the loan servicing programs discussed above will not allow you to pay all essential family living and farm operating expenses, maintain your property, and pay your debts.

You must be able to show through a farm operating plan that you are unable to pay all essential family living and farm operating expenses, maintain your property, and pay your debts. The farm operating plan must also show that you will be able to pay your full installment at the end of the deferral period.

The interest that accrues during the deferral period must be paid in yearly payments for the rest of the loan term after the deferral period ends.

Debt Writedown

Debt writedown can reduce the principal and interest on your loan. The Agency offers a writedown only when the loan servicing programs discussed above and the Conservation Contract Program, if requested, will not result in a feasible plan. To receive debt writedown, the value of your restructured loan must be equal to or greater than the recovery value to the Agency from foreclosure and repossession of your security property.

The recovery value is the market value of:

(1) The collateral pledged as security for FLP loans minus expenses (such as the sale costs, attorneys' fees, management costs, taxes, and payment of prior liens) on the collateral that the Agency would have to pay if it foreclosed, or repossessed, and sold the collateral;

(2) Any collateral that is not in your possession and has not been released for sale by the Agency in writing; and

(3) Any other non-essential assets you may own.

A qualified appraiser determines the value of the collateral and any other assets you own. You may receive a writedown only if you have not previously received any form of debt forgiveness on any other FLP direct loan. The maximum amount of debt that can be written down on all direct loans is $300,000.

Shared Appreciation Agreement

If you own real estate and receive a debt writedown, you must sign a Shared Appreciation Agreement. The term of the agreement is five years. Under the terms of the agreement you must repay all or a part of the amount written down at the maturity of your Shared Appreciation Agreement if your real estate collateral increased in value. Payment of shared appreciation will be required prior to the maturity of your Shared Appreciation Agreement if you:

(1) Sell or convey the real estate;

(2) Stop farming;

(3) Pay off your entire FLP debt; or

(4) Have your FLP accounts accelerated by the Agency.

If any of these events occur within the first four years of the agreement, you will have to pay 75 percent of the increase in value of the real estate. If any of these events occur after the fourth anniversary of the agreement, or if the Shared Appreciation Agreement matures without having previously been fully triggered, you will have to pay only 50 percent of the increase in value. You will not have to pay more than the amount of the debt written down.

(b) Conservation Contract Program

You may request a Conservation Contract to protect highly erodible land, wetlands, or wildlife habitats located on your real estate property that serves as security for your FLP debt. In exchange for such contract, the Agency would reduce your FLP debt. The amount of land left after the contract must be sufficient to continue your farming operation.

(c) Current Market Value Buyout

If the analysis of your debt shows that you cannot achieve a feasible plan even if the present value of your FLP debt is reduced to the value of the security, the Agency may offer you buyout of your Farm Loan Programs debt. You would pay the market value of all FLP security and non-essential assets, minus any prior liens. The market value is determined by a current appraisal completed by a qualified appraiser. In exchange, your loans would be satisfied.

Limits

To receive a current market value buyout offer:

(1) You must not have previously received any form of debt forgiveness from the Agency on any other direct FLP loan;

(2) The maximum debt to be written off with buyout does not exceed $300,000; and

(3) You must not have non-essential assets with a net recovery value sufficient to pay your account current.

Eligibility

To qualify, you must prove that:

(1) You cannot repay your delinquent FLP debt due to circumstances beyond your control; and

(2) You have acted in good faith in accordance with your loan agreements.

Time Limit

To buyout your FLP debt at the current market value, you must pay the Agency within 90 days of the date you receive the offer.

Method of payment

To buyout your FLP debt at the current market value, you must pay by cash, cashier's check, or U.S. Treasury check. The Agency will not make or guarantee a loan for this purpose.

(d) Homestead Protection Program

Under the Homestead Protection Program, you may repurchase your primary residence, certain outbuildings, and up to 10 acres of land. If you cannot pay cash or Agency financing is not available, you may lease your primary residence. The lease will include an option for you to purchase the property you lease.

This program may apply when primary loan servicing, the Conservation Contract Program, or current market value buyout is not available or not accepted.

You must agree to give the Agency title to your land at the time the Agency signs the homestead protection agreement with you. The Agency will compute the costs of taking title including the cost of paying other creditors who have outstanding liens on the property. The Agency will take title only if it can obtain a positive recovery.

Eligibility requirements

(1) Your gross annual income from the farming operation must have been similar to other comparable operations in your area in at least two of the last six years.

(2) Sixty percent (60%) of your gross annual income in at least two of the last six years must have come from the farming operation.

(3) You must have lived in your homestead property for six years immediately before your application. If you had to leave for less than 12 months during the 6-year period and you had no control over the circumstances, you may still qualify.

(4) You must be the owner of the property immediately prior to the Agency obtaining title.

Property restrictions and easements

The Agency may place restrictions or easements on your property which restrict your use if the property is located in a special area or has special characteristics. These restrictions and easements will be placed in leases and in deeds on properties containing wetlands, floodplains, endangered species, wild and scenic rivers, historic and cultural properties, coastal barriers, and highly erodible lands.

Leasing the homestead property

(1) You must pay rent to the Agency to lease the property determined eligible for homestead protection. The rent the Agency charges will be similar to comparable property in your area.

(2) You must maintain the property in good condition during the term of the lease.

(3) You may lease the property for up to five years but no less than three years.

(4) You cannot sublease the property.

(5) If you do not make the rental payments to the Agency, the Agency will cancel the lease and take legal action to force you to leave.

(6) Lease payments are not applied toward the final purchase price of the property.

Purchasing the homestead protection property

You can repurchase your homestead property at market value at any time during the lease. The market value of the property will be decided by a qualified appraiser and will reflect the value of the land after any placement of a restriction or easement such as a wetland conservation easement.

(e) Debt Settlement Programs

You can apply for debt settlement at any time; however, these programs are usually used only after it has been determined that primary loan servicing programs and the Conservation Contract Program cannot help you. Under the debt settlement programs, the debt you owe the Agency under FLP may be settled for less than the amount you owe. These programs are subject to the discretion of the Agency and are not a matter of entitlement or right. If you do not have any Agency security, you may apply for debt settlement only. If you do not apply, or do not receive approval of a debt settlement request, your FLP loan accounts will be forwarded to the Department of the Treasury for collection.

Settlement Alternatives

Settlement alternatives include:

(1) Compromise: A lump-sum payment of less than the total FLP debt owed;

(2) Adjustment: Two or more payments of less than the total amount owed to the Agency. Payments can be spread out over a maximum of 5 years if the Agency determines you will be able to make the payments as they become due; and

(3) Cancellation: Satisfaction of Agency debt without payment.

Note: The Agency will not finance these alternatives.

Processing and Requirements

If you sell loan collateral, you must apply the proceeds from the sale to your FLP loans before you can be considered for debt settlement. In the case of compromise or adjustment you may keep your collateral, if you pay the Agency the market value of your collateral along with any additional amount the Agency determines you are able to pay.

Debt amounts which are collectible through administrative offset, judgment, or by the Department of the Treasury will not be settled through debt settlement procedures. You must certify that you do not have assets or income in addition to what you stated in your application. If you qualify, your application must also be approved by the State Executive Director or the Administrator, depending on the amount of the debt to be settled.

(f) Forms, Documentation, and Information Needed to Apply

A complete application for primary loan servicing must include items 1 through 9. Additional information is required as noted if you want to be considered for the Conservation Contract Program or for debt settlement programs. If you need help to complete the required forms, you may request an Agency official to assist you. The forms for requirements (1) through (6) and (10) are included with this package.

(1) FSA 2504 ''Acknowledgment of Available Loan Servicing—90 Days Past Due.'' All individuals and entities liable for the FLP debt must sign FSA 2504 to request servicing.

(2) FSA 410–1, ''Application for Agency Services.'' In the case of an entity borrower, all entity members must provide current financial statements.

(3) FSA 431–2, ''Farm and Home Plan'', or other acceptable plan of operation.

(4) FSA 440–32, ''Request for Statement of Debts and Collateral.'' Complete the name and address of the creditor, account number, if applicable, and your name. All parties liable to the creditor must sign and date the form. The Agency will mail this form to the creditor to obtain the needed information. Any debts less than $1,000 can be verified by a credit report. If debts of $1,000 or more appear on your credit report and no FSA 440–32 is supplied to the Agency to mail to the creditor within the 60-day time period, the application cannot be considered complete.

(5) RD 1910–5, ''Request for Verification of Employment.'' If you have non-farm income, you must complete employer's name and address, employee's name and address, social security number, sign and date the form. The Agency will send the form to your employer to obtain the needed information.

(6) FSA 1960–12, ''Financial and Production Farm Analysis Summary.'' Complete the form or another similar worksheet to provide production and expense history for crops, livestock, livestock products, etc., for each of the three years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. You must be able to support this information with farm records.

(7) AD–1026, ''Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification.'' You will be required to complete this form if the one you have on file does not reflect all the land you own and lease.

(8) SCS–CPA–026, ''Highly Erodible Land and Wetland Conservation Determination.'' This form must be obtained from and completed by the Natural Resources Conservation Service office, if not already on file with the Agency.

(9) Copies of your income tax records and any supporting documents for the last three years immediately preceding the year of application. If your copies of tax records are not readily available, you can obtain copies from the Internal Revenue Service.

(10) RD 1956–1, ''Application for Settlement of Indebtedness.'' Complete this form only if you wish to apply for debt settlement. You must also comply with any Agency request for additional information needed to process a debt settlement request.

(11) If you are applying for a Conservation Contract a map or aerial photo of your farm identifying the portion of the land and approximate number of acres to be considered.

Divorced Spouses

If you are an FLP obligor who has left the farm operation due to divorce, you may request release of liability. To be released of liability after a divorce, you must present the Agency with the following within 60 days of receiving this notice:

(1) A divorce decree or property settlement document which states the remaining party will be responsible for all repayment to the Agency;

(2) Evidence that you have conveyed your ownership interest in FLP security to the remaining party; and

(3) Evidence that you do not have any repayment ability for the FLP loan through cash, income, or other non-essential assets.

The Agency will make a determination on your request and will inform you of the decision within 60 days of receiving your request.

If you are not released of liability, you will need to include all of your relevant financial information if applying for primary loan servicing, homestead protection, or debt settlement program.

(g) How To Get Copies of Agency Handbooks and Forms

Copies of the forms for requirements (f)(1) through (f)(6) and (f)(10) have been included in this notice. You may obtain copies of Agency handbooks describing available programs or additional copies of forms from this office.

(h) Reconsideration, Mediation, Negotiation, and Appeal Rights

Reconsideration, mediation, negotiation, and appeal rights will be provided to you if the Agency makes an adverse decision on your request for loan servicing or prior to acceleration of your account. These options will be provided when required to insure that you are given the reasons for the Agency decision and complete information on how you may request any of these options.

Reconsideration

If you are determined by the Agency to be ineligible for loan servicing, or if you cannot develop a feasible plan, you may request a reconsideration meeting with the Agency decision maker. You must request reconsideration within 30 days of the date you receive the adverse decision. At a reconsideration meeting, you may present additional information to the decision maker and explain why you believe the adverse decision to be in error. If the meeting does not change the Agency decision, you will be notified and provided 30 days to request mediation, negotiation, or appeal as outlined below.

Mediation

Mediation is a process for resolution of a disagreement. A trained neutral mediator assists two or more parties in dispute to look at the issues, consider all available options, and attempt to agree on an acceptable solution. If your State has a mediation program approved by the USDA, the Agency will participate in mediation. If there is no State mediation program, the Agency may help you to set up a meeting with your other creditors. If you wish to request mediation, you must make such request within 30 days of your receipt of an adverse Agency decision. If you request mediation prior to requesting an appeal, the 30 day time period for requesting an appeal will be temporarily suspended. If mediation fails to resolve your dispute with the Agency, only the balance of the 30 days will remain to request an appeal.

Negotiation of the Appraisal

If you timely submit a complete application for primary loan servicing, but disagree with the appraisal used by the Agency for processing your primary loan servicing request, you will have 30 days to obtain, at your own expense, an independent appraisal which conforms to published Agency appraisal standards. If this independent appraised value is within 5 percent of the value of the Agency appraisal, you must choose one of these two appraisals for the Agency to use to continue processing your request. If the appraisals differ by more than 5 percent, you may request a third appraisal for which you must pay half of the cost, and the average of the two appraisals closest in value is taken as the final appraised value to be used in considering your request. If you wish to request both negotiation and mediation, these should be requested at the same time so the negotiation of the appraisal can be concluded prior to mediation. If not requested at the same time, negotiation of the appraisal must be requested first. Negotiated appraisals are not appealable but other issues can still be appealed after negotiation. If you request negotiation of the appraisal prior to requesting an appeal, the 30 day time period for requesting an appeal will be temporarily suspended. If negotiation of the appraisal fails to resolve your dispute with the Agency, only the balance of the 30 day time frame will remain to request an appeal on issues other than the negotiated appraisal.

Appeal

Appeal is a process under which you present evidence to USDA's National Appeals Division which shows that the Agency's adverse decision is wrong. Subject to the deadline suspensions discussed above, your request for an appeal must be postmarked no later than 30 days from the date you received the Agency's adverse decision.

(i) Acceleration and foreclosure

If you do not appeal an adverse determination, if you appeal, but are denied relief on appeal, or if you do not otherwise resolve your delinquency, the Agency will accelerate your loan accounts and demand payment of the entire debt. You may prevent Agency foreclosure on the loan collateral, if with prior Agency approval, you:

(1) Sell all loan collateral for not less than its current market value and apply all proceeds to your creditors in order of lien priority.

(2) Transfer the collateral to someone else and have that person assume all or part of your FLP debt.

(3) Transfer the collateral to the Agency.

If any of these options result in payment of less than you owe, you may apply for debt settlement. However, applications for debt settlement filed after the 60-day time period provided in this notice will not delay acceleration, administrative offset, and foreclosure. If the Agency determines that you cannot qualify for debt settlement, you can:

(1) Pay your FLP loan accounts current;

(2) Pay your FLP loan accounts in full;

(3) Request reconsideration, mediation or appeal.

If your real estate security contains your primary residence and becomes inventory property of the Agency, Homestead Protection rights will be provided.

(j) The right not to be discriminated against

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

USDA regulations prohibit discrimination in USDA programs because of your race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, disability; because all or part of your income is derived from any public assistance program; or because you have filed a program complaint, participated in any program complaint proceeding, or opposed a prohibited practice.

If you believe that you have been discriminated against for any of the reasons stated above, you may file a complaint with the Director, Office of Civil Rights, United States Department of Agriculture, Room 326–W, Whitten Building, 1400 Independence Avenue SW., Washington, DC 20250–9410.

The servicing programs described by this Notice are subject to applicable Agency regulations published at 7 CFR 766.

For more information, please contact this office.

Title
Office Address
Telephone number

Appendix C to subpart C of part 766—Notice of Availability of Loan Servicing to Borrowers in Non-Monetary Default

FSA 2505

Notice of Availability of Loan Servicing to Borrowers in Non-Monetary Default

Dear (Borrower's Name):

The Agency has reviewed your Farm Loan Programs (FLP) loan account. Our records show:

[ ] You have disposed of property used to secure your FLP loan. You did not get written approval for this. This property is

_____

_____

_____

_____

(Describe property.)

[ ] You have stopped farming.

[ ] A foreclosure action has been filed against you by _____.

[ ] You have

_____

_____

(Insert reasons for proposed action.)

[ ] You are also $_____ behind on your payments.

This notice informs you that you are in default on your FLP loans. You must resolve this default. The Agency's primary loan servicing programs, Conservation Contract Program, current market value buyout, Homestead Protection Program, and debt settlement programs may assist you in resolving the default.

How to apply

To apply, you must complete, where applicable, and provide all items required in paragraph (f), within *60 days* of the date you receive this notice.

Help in responding to this notice

The servicing options available to you may become complicated. You may need help to understand them and their impact on your operation. You may want to ask an attorney to help you or there are organizations that give free or low-cost advice to farmers. You may contact your State Department of Agriculture or the USDA Extension Service for available services in your State.

Note: Agency employees cannot recommend a particular attorney or organization.

Who will decide if you qualify?

After you submit a complete application, the Agency will determine if you meet all eligibility requirements and can develop a farm operating plan which shows that you can pay all debts and expenses.

What happens if you do not resolve the default or apply within 60 days?

The Agency will accelerate your FLP loan if you do not resolve the default, or apply for loan servicing. This means the Agency will take legal action to collect all the money you owe. After acceleration of your FLP loan accounts, the Agency will start foreclosure proceedings. The Agency will repossess or take legal action to take any real estate, personal property, crops, livestock, equipment, or any other assets in which the Agency has a security interest. The Agency will stop all releases of the proceeds from Agency security including, but not limited to, releases of your crops, livestock, and milk. The Agency will take by administrative offset money, or other program benefits, which FSA or other Federal Agencies owe you. The Agency will also file judgements against you and your property or refer your account to the Department of the Treasury for collection.

Included with this notice you will find information on:

(a) Primary loan servicing programs;

(b) Conservation Contract Program;

(c) Current market value buyout;

(d) Homestead Protection Program;

(e) Debt settlement programs;

(f) Forms, documentation, and information needed to apply;

(g) How to get copies of Agency handbooks and forms;

(h) Reconsideration, mediation, negotiation, and appeal rights;

(i) Acceleration and foreclosure;

(j) The right not to be discriminated against.

(a) Primary Loan Servicing Programs

Eligibility

You must meet the following eligibility requirements to obtain primary loan servicing:

(a) You must resolve all non-monetary defaults prior to closing the servicing action.

(b) You must have acted in good faith in accordance with your loan agreements.

(c) If you are also financially distressed or delinquent, it must be due to circumstances beyond your control which reduced your repayment ability to the extent that scheduled payments cannot be made as a result of one of the following circumstances:

(1) Illness, injury, or death of a borrower or another individual who operates the farm;

(2) Natural disaster, adverse weather, disease, or insect damage which caused severe loss of agricultural production;

(3) Widespread economic conditions such as low commodity prices;

(4) Damage or destruction of property essential to the operation; or

(5) Loss of, or reduction in, your or your spouse's essential non-farm income.

(d) You do not have non-essential assets for which the net recovery value is sufficient to pay any delinquent portion of the loan. The Agency cannot reduce or write off debt that you could pay with the value of your equity in these assets.

Time limits

If the Agency determines that you can develop a feasible plan and are eligible for primary loan servicing, you will have 45 days from the date you receive the Agency's offer to accept loan servicing.

Lien requirements

If you are offered loan servicing and accept the offer, you must agree to give the Agency a lien on your other assets and you must provide this lien at closing.

Loan consolidation

The unpaid principal and interest of two or more operating loans can be combined into one larger operating loan. When loans are consolidated, the interest rate will be the lesser of:

(1) the lowest interest rate for that type of loan on the date a complete servicing application was received;

(2) the lowest interest rate for that type of loan on the date of restructure; or

(3) the lowest original loan note rate on any of the original notes being consolidated.

In addition, the Agency will consider the maximum loan terms.

Loan rescheduling

The repayment schedule may be changed to cure the financial distress or delinquency and give you new terms to repay loans made for equipment, livestock, or annual operating purposes. When loans are rescheduled, the interest rate will be the lesser of:

(1) the lowest interest rate for that type of loan on the date a complete servicing application was received;

(2) the lowest interest rate for that type of loan on the date of restructure; or

(3) the lowest original loan note rate on any of the original notes being rescheduled.

In addition, the Agency will consider the maximum loan terms.

Loan Reamortization

The repayment schedule may be changed to cure the financial distress or delinquency and give you a new schedule of repayment on loans made for real estate purposes. When loans are reamortized, the interest rate will be the lesser of:

(1) The lowest interest rate for that type of loan on the date a complete servicing application was received;

(2) the lowest interest rate for that type of loan on the date of restructure; or

(3) the original loan note rate of the note being reamortized.

In addition, the Agency will consider the maximum loan terms.

Limited Resource Interest Rate

Limited resource interest rates are available for certain types of loans. If you have existing loans which are not at the limited resource rate, but a limited resource rate is available, the Agency will consider reducing the rate of the loans. The limited resource interest rate can be as low as 5 percent, however, this rate may change depending on what it costs the Government to borrow money.

For information about current interest rates, contact this office.

Loan Deferral

Partial or full payments of principal and interest may be temporarily delayed for up to five years. You will only be considered for loan deferral if the loan servicing programs discussed above will not allow you to pay all essential family living and farm operating expenses, maintain your property, and pay your debts.

You must be able to show through a farm operating plan that you are unable to pay all essential family living and farm operating expenses, maintain your property, and pay your debts. The farm operating plan must also show that you will be able to pay your full installment at the end of the deferral period.

The interest that accrues during the deferral period must be paid in yearly payments for the rest of the loan term after the deferral period ends.

Debt Writedown

Debt writedown can reduce the principal and interest on your loan. The Agency offers a writedown only when the loan servicing programs discussed above and the Conservation Contract Program will not result in a feasible plan. To receive debt writedown, the value of your restructured loan must be equal to or greater than the recovery value to the Agency from foreclosure and repossession of your security property.

The recovery value is the market value of:

(1) The collateral pledged as security for FLP loans minus expenses (such as the sale costs, attorneys' fees, management costs, taxes, and payment of prior liens) on the collateral that the Agency would have to pay if it foreclosed, or repossessed, and sold the collateral;

(2) Any collateral that is not in your possession and has not been released for sale by the Agency in writing; and

(3) Any other non-essential assets you may own.

A qualified appraiser determines the value of the collateral and any other assets you own. You may receive a writedown only if you have not previously received any form of debt forgiveness on any other FLP direct loan. The maximum amount of debt that can be written down on all direct loans is $300,000.

Shared Appreciation Agreement

If you own real estate and receive a debt writedown, you must sign a Shared Appreciation Agreement. The term of the agreement is five years. Under the terms of the agreement you must repay all or a part of the amount written down at the maturity of your Shared Appreciation Agreement if your real estate collateral increased in value. Payment of shared appreciation will be required prior to the maturity of your Shared Appreciation Agreement if you:

(1) Sell or convey the real estate;

(2) Stop farming;

(3) Pay off your entire FLP debt; or

(4) Have your FLP accounts accelerated by the Agency.

If any of these events occur within the first four years of the agreement, you will have to pay 75 percent of the increase in value of the real estate. If any of these events occur after the fourth anniversary of the agreement, or if the Shared Appreciation Agreement matures without having previously been fully triggered, you will have to pay only 50 percent of the increase in value. You will not have to pay more than the amount of the debt written down.

(b) Conservation Contract Program

You may request a Conservation Contract to protect highly erodible land, wetlands, or wildlife habitats located on your real estate property that serves as security for your FLP debt. In exchange for such contract, the Agency would reduce your FLP debt. The amount of land left after the contract must be sufficient to continue your farming operation.

(c) Current Market Value Buyout

If the analysis of your debt shows that you cannot achieve a feasible plan even if the present value of your FLP debt is reduced to the value of the security, the Agency may offer you buyout of your FLP debt. You would pay the market value of all Agency security and non-essential assets, minus any prior liens. The market value is determined by a current appraisal completed by a qualified appraiser. In exchange, your loans would be satisfied.

Limits

To receive a current market value buyout offer:

(1) You must not have previously received any form of debt forgiveness from the Agency on any other direct FLP loan;

(2) The maximum debt to be written off with buyout does not exceed $300,000; and

(3) You must not have non-essential assets with a net recovery value sufficient to pay your account current if you are delinquent.

Eligibility

To qualify, you must prove that:

(1) You cannot repay your delinquent FLP debt due to circumstances beyond your control; and

(2) You have acted in good faith in accordance with your loan agreements.

Time Limit

To buyout your FLP debt at the current market value, you must pay the Agency within 90 days of the date you receive the offer.

Method of Payment

To buyout your FLP debt at the current market value, you must pay by cash, cashier's check, or U.S. Treasury check. The Agency will not make or guarantee a loan for this purpose.

(d) Homestead Protection Program

Under the Homestead Protection Program, you may repurchase your primary residence, certain outbuildings, and up to 10 acres of land. If you cannot pay cash or Agency financing is not available, you may lease your primary residence. The lease will include an option for you to purchase the property you lease.

This program may apply when primary loan servicing, the Conservation Contract Program, or current market value buyout is not available or not accepted.

You must agree to give the Agency title to your land at the time the Agency signs the homestead protection agreement with you. The Agency will compute the costs of taking title including the cost of paying other creditors who have outstanding liens on the property. The Agency will take title only if it can obtain a positive recovery.

Eligibility Requirements

(1) Your gross annual income from the farming operation must have been similar to other comparable operations in your area in at least two of the last six years.

(2) Sixty percent (60%) of your gross annual income in at least two of the last six years must have come from the farming operation.

(3) You must have lived in your homestead property for six years immediately before your application. If you had to leave for less than 12 months during the 6-year period and you had no control over the circumstances, you may still qualify.

(4) You must be the owner of the property immediately prior to the Agency obtaining title.

Property Restrictions and Easements

The Agency may place restrictions or easements on your property which restrict your use if the property is located in a special area or has special characteristics. These restrictions and easements will be placed in leases and in deeds on properties containing wetlands, floodplains, endangered species, wild and scenic rivers, historic and cultural properties, coastal barriers, and highly erodible lands.

Leasing the Homestead Property

(1) You must pay rent to the Agency to lease the property determined eligible for homestead protection. The rent the Agency charges will be similar to comparable property in your area.

(2) You must maintain the property in good condition during the term of the lease.

(3) You may lease the property for up to five years but no less than three years.

(4) You cannot sublease the property.

(5) If you do not make the rental payments to the Agency, the Agency will cancel the lease and take legal action to force you to leave.

(6) Lease payments are not applied toward the final purchase price of the property.

Purchasing the Homestead Protection Property

You can repurchase your homestead property at current market value at any time during the lease. The market value of the property will be decided by a qualified appraiser and will reflect the value of the land after any placement of a restriction or easement such as a wetland conservation easement.

(e) Debt Settlement Programs

You can apply for debt settlement at any time; however, these programs are usually used only after it has been determined that primary loan servicing programs and Conservation Contract cannot help you. Under the debt settlement programs, the debt you owe the Agency under FLP may be settled for less than the amount you owe. These programs are subject to the discretion of the Agency and are not a matter of entitlement or right. If you do not have any Agency security, you may apply for debt settlement only. If you do not apply, or do not receive approval of a debt settlement request, your FLP loan accounts will be forwarded to the Department of the Treasury for collection.

Settlement Alternatives

Settlement alternatives include:

(1) Compromise: A lump-sum payment of less than the total FLP debt owed;

(2) Adjustment: Two or more payments of less than the total amount owed to the Agency. Payments can be spread out over a

maximum of 5 years if the Agency determines you will be able to make the payments as they become due; and

(3) Cancellation: Satisfaction of Agency debt without payment.

Note: The Agency will not finance these alternatives.

Processing and Requirements

If you sell loan collateral, you must apply the proceeds from the sale to your FLP loans before you can be considered for debt settlement. In the case of compromise or adjustment you may keep your collateral, if you pay the Agency the market value of your collateral along with any additional amount the Agency determines you are able to pay.

Debt amounts which are collectible through administrative offset, judgment, or by the Department of the Treasury will not be settled through debt settlement procedures. You must certify that you do not have assets or income in addition to what you stated in your application.

If you qualify, your application must also be approved by the State Executive Director or the Administrator, depending on the amount of the debt to be settled.

(f) Forms, Documentation, and Information Needed To Apply

A complete application for primary loan servicing must include items 1 through 9. Additional information is required as noted if you want to be considered for a Conservation Contract or for debt settlement programs. If you need help to complete the required forms, you may request an Agency official to assist you. The forms for requirements 1 through 6 and 10 are included with this package.

(1) FSA 2506 ''Acknowledgment of Available Loan Servicing—Non-Monetary Default.'' All individuals and entities liable for the FLP debt must sign FSA 2506 to request servicing.

(2) FSA 410–1, ''Application for Agency Services.'' In the case of an entity borrower, all entity members must provide current financial statements.

(3) FSA 431–2, ''Farm and Home Plan'', or other acceptable plan of operation.

(4) FSA 440–32, ''Request for Statement of Debts and Collateral.'' Complete the name and address of the creditor, account number, if applicable, and your name. All parties liable to the creditor must sign and date the form. The Agency will mail this form to the creditor to obtain the needed information. Any debts less than $1,000 can be verified by a credit report. If debts of $1,000 or more appear on your credit report and no FSA 440–32 is supplied to the Agency to mail to the creditor within the 60-day time period, the application cannot be considered complete.

(5) RD 1910–5, ''Request for Verification of Employment.'' If you have non-farm income, you must complete employer's name and address, employee's name and address, social security number, sign and date the form. The Agency will send the form to your employer to obtain the needed information.

(6) FSA 1960–12, ''Financial and Production Farm Analysis Summary.'' Complete the form or another similar worksheet to provide production and expense history for crops, livestock, livestock products, etc., for each of the three years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. You must be able to support this information with farm records.

(7) AD–1026, ''Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification.'' You will be required to complete this form if the one you have on file does not reflect all the land you own and lease.

(8) SCS-CPA–026, ''Highly Erodible Land and Wetland Conservation Determination.'' This form must be obtained from and completed by the Natural Resources Conservation Service office, if not already on file with the Agency.

(9) Copies of your income tax records and any supporting documents for the last three years immediately preceding the year of application. If your copies of tax records are not readily available, you can obtain copies from the Internal Revenue Service.

(10) RD 1956–1, ''Application for Settlement of Indebtedness.'' Complete this form only if you wish to apply for debt settlement. You must also comply with any Agency request for additional information needed to process a debt settlement request.

(11) If you are applying for a Conservation Contract a map or aerial photo of your farm identifying the portion of the land and approximate number of acres to be considered.

Divorced Spouses

If you are an FLP obligor who has left the farm operation due to divorce, you may request release of liability. To be released of liability after a divorce, you must present the Agency with the following within 60 days of receiving this notice:

(1) A divorce decree or property settlement document which states the remaining party will be responsible for all repayment to the Agency;

(2) Evidence that you have conveyed your ownership interest in FLP security to the remaining party; and

(3) Evidence that you do not have any repayment ability for the FLP loan through cash, income, or other non-essential assets.

The Agency will make a determination on your request and will inform you of the decision within 60 days of receiving your request.

If you are not released of liability, you will need to include all of your relevant financial information if applying for primary loan servicing, homestead protection, or debt settlement program.

(g) How To Get Copies of Agency Handbooks and Forms

Copies of the forms for requirements (f)(1) through (f)(6) and (f)(10) have been included in this notice. You may obtain copies of Agency handbooks describing available programs or additional copies of forms from this office.

(h) Reconsideration, Mediation, Negotiation, and Appeal Rights

Reconsideration, mediation, negotiation, and appeal rights will be provided to you if the Agency makes an adverse decision on your request for loan servicing or prior to acceleration of your account. These options will be provided when required to insure that you are given the reasons for the Agency decision and complete information on how you may request any of these options.

Reconsideration

If you are determined by the Agency to be ineligible for loan servicing, or if you cannot develop a feasible plan, you may request a reconsideration meeting with the Agency decision maker. You must request reconsideration within 30 days of the date you receive the adverse decision. At a reconsideration meeting, you may present additional information to the decision maker and explain why you believe the adverse decision to be in error. If the meeting does not change the Agency decision, you will be notified and provided 30 days to request mediation, negotiation, or appeal as outlined below.

Mediation

Mediation is a process for resolution of a disagreement. A trained neutral mediator assists two or more parties in dispute to look at the issues, consider all available options, and attempt to agree on an acceptable solution. If your State has a mediation program approved by the USDA, the Agency will participate in mediation. If there is no State mediation program, the Agency may help you to set up a meeting with your other creditors. If you wish to request mediation, you must make such request within 30 days of your receipt of an adverse Agency decision. If you request mediation prior to requesting an appeal, the 30 day time period for requesting an appeal will be temporarily suspended. If mediation fails to resolve your dispute with the Agency, only the balance of the 30 days will remain to request an appeal.

Negotiation of the Appraisal

If you timely submit a complete application for primary loan servicing, but disagree with the appraisal used by the Agency for processing your primary loan servicing request, you will have 30 days to obtain, at your own expense, an independent appraisal which conforms to published Agency appraisal standards. If this independent appraised value is within 5 percent of the value of the Agency appraisal, you must choose one of these two appraisals for the Agency to use to continue processing your request. If the appraisals differ by more than 5 percent, you may request a third appraisal for which you must pay half of the cost, and the average of the two appraisals closest in value is taken as the final appraised value to be used in considering your request. If you wish to request both negotiation and mediation, these should be requested at the same time so the negotiation of the appraisal can be concluded prior to mediation. If not requested at the same time, negotiation of the appraisal must be requested first. Negotiated appraisals are not

appealable but other issues can still be appealed after negotiation. If you request negotiation of the appraisal prior to requesting an appeal, the 30 day time period for requesting an appeal will be temporarily suspended. If negotiation of the appraisal fails to resolve your dispute with the Agency, only the balance of the 30 day time frame will remain to request an appeal on issues other than the negotiated appraisal.

Appeal

Appeal is a process under which you present evidence to USDA's National Appeals Division which shows that the Agency's adverse decision is wrong. Subject to the deadline suspensions discussed above, your request for an appeal must be postmarked no later than 30 days from the date you received the Agency's adverse decision.

(i) Acceleration and Foreclosure

If you do not appeal an adverse determination, if you appeal, but are denied relief on appeal, or if you do not otherwise resolve your delinquency, the Agency will accelerate your loan accounts and demand payment of the entire debt. You may prevent Agency foreclosure on the loan collateral, if with prior Agency approval, you:

(1) Sell all loan collateral for not less than its current market value and apply all proceeds to your creditors in lien order.

(2) Transfer the collateral to someone else and have that person assume all or part of your FLP debt.

(3) Transfer the collateral to the Agency.

If any of these options result in payment of less than you owe, you may apply or reapply for debt settlement even if you applied before and were denied. However, applications for debt settlement filed after the 60-day time period provided in this notice will not delay acceleration, administrative offset, and foreclosure.

If the Agency determines that you cannot qualify for debt settlement, you can:

(1) Pay your FLP loan accounts current;

(2) Pay your FLP loan accounts in full;

(3) Request reconsideration, mediation or appeal.

If your real estate security contains your primary residence and becomes inventory property of the Agency, homestead protection rights will be provided.

(j) The right not to be discriminated against

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

USDA regulations prohibit discrimination in USDA programs because of your race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, disability; because all or part of your income is derived from any public assistance program; or because you have filed a program complaint, participated in any program complaint proceeding, or opposed a prohibited practice.

If you believe that you have been discriminated against for any of the reasons stated above, you may file a complaint with the Director, Office of Civil Rights, United States Department of Agriculture, Room 326–W, Whitten Building, 1400 Independence Avenue SW., Washington, DC 20250–9410.

The servicing programs described by this Notice are subject to applicable Agency regulations published at 7 CFR 766.

For more information, please contact this office.

Title
Office Address
Telephone number

15. Add part 767 to read as follows:

PART 767—INVENTORY PROPERTY MANAGEMENT

Sec.

Subpart A—Overview

767.1 Introduction to inventory property management.
767.2 Abbreviations and definitions.
767.3–767.50 [Reserved]

Subpart B—Property Abandonment and Personal Property Removal

767.51 Property abandonment.
767.52 Disposition of personal property from inventory real property.
767.53–767.100 [Reserved]

Subpart C—Lease of Inventory Real Property

767.101 Leasing inventory real property.
767.102 Lease of inventory non-real estate property.
767.103 Managing leased inventory real property.
767.104–767.150 [Reserved]

Subpart D—Disposal of Inventory Property

767.151 General requirements.
767.152 Exceptions.
767.153 Sale of inventory real property.
767.154 Conveying easements, rights-of-way, and other interests in inventory property.
767.155 Selling chattel property.
767.156–767.200 [Reserved]

Subpart E—Real Property with Important Resources, Special Hazard Areas and Environmental Risks

767.201 Inventory real property with important resources.
767.202 Inventory real property located in special hazard areas.
767.203 Inventory real property containing environmental risks.
767.204–767.250 [Reserved]

Subpart F—Exception Authority

767.251 Agency exception authority.
767.252–767.300 [Reserved]

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A—Overview

§ 767.1 Introduction to inventory property management.

(a) *Purpose.* This part describes the Agency's policies for:

(1) Managing inventory property;

(2) Selling inventory property;

(3) Leasing inventory property;

(4) Managing real and chattel property the Agency takes into custody after abandonment by the borrower;

(5) Selling or leasing inventory property with important resources, special hazard areas and environmental risks; and

(6) Conveying interest in real property for conservation purposes.

(b) *Basic policy.* The Agency maintains, manages and sells inventory property as necessary to protect the Agency's financial interest.

§ 767.2 Abbreviations and definitions.

Abbreviations and definitions for terms used in this part are provided in § 761.2 of this chapter.

§§ 767.3–767.50 [Reserved]

Subpart B—Property Abandonment and Personal Property Removal

§ 767.51 Property abandonment.

The Agency will take actions necessary to secure, maintain, preserve, manage, and operate the abandoned security property, including marketing perishable security property on behalf of the borrower when such action is in the Government's best financial interest. If the security is in jeopardy, the Agency will take the above actions prior to completing servicing actions contained in 7 CFR 766.

§ 767.52 Disposition of personal property from inventory real property.

(a) *Preparing to dispose of personal property.* If, at the time of acquisition, personal property has been left on the inventory real property, the Agency will notify the former real estate owner and any known lienholders that the Agency will dispose of the personal property. Property of value may be sold at a public sale.

(b) *Reclaiming personal property.* The owner or lienholder may reclaim personal property at any time prior to the property's sale or disposal by paying all expenses incurred by the Agency in connection with the personal property.

(c) *Use of proceeds from sale of personal property.* Proceeds from the public sale of personal property will be distributed as follows:

(1) To lienholders in order of lien priority less a pro rata share of the sale expenses;

(2) To the inventory account up to the amount of expenses incurred by the Agency in connection with the sale of personal property;

(3) To the outstanding balance on the Agency loan; and

(4) To the borrower, if the borrower's whereabouts are known.

§§ 767.53–767.100 [Reserved]

Subpart C—Lease of Inventory Real Property

§ 767.101 Leasing inventory real property.

(a) *When the Agency may lease inventory real property.* The Agency may lease inventory real property in the following situations:

(1) To the former owner under the Homestead Protection Program.

(2) To a beginning farmer who was selected to purchase the property but was unable to purchase it because of a lack of Agency direct or guaranteed loan funds.

(3) When the Agency is unable to sell the property because of lengthy litigation or appeal processes.

(b) *Condition of property.* The Agency will lease inventory real property in an ''as is'' condition.

(c) *Lease terms.* (1) The Agency will lease property for:

(i) Homestead protection in accordance with part 766, subpart D, of this chapter.

(ii) A maximum of 18 months to a beginning farmer the Agency selected as purchaser when no Agency loan funds are available; or

(iii) For the shortest possible duration for all other cases subject to the following:

(A) The maximum lease term for such a lease is 12 months.

(B) The lease is not subject to renewal or extension.

(2) The lessee may pay:

(i) A lump sum;

(ii) On an annual installment basis;

(iii) On a crop-share basis, if the lessee is a beginning farmer under paragraph (a) of this section.

(3) The Agency leases inventory real property for a market rent amount charged for similar properties in the area.

(4) The Agency may require the lessee to provide a security deposit.

(5) Only leases to a beginning farmer or Homestead Protection Program participant will contain an option to purchase the property.

§ 767.102 Lease of inventory non-real estate property.

The Agency does not lease non-real estate property unless it is attached as a fixture to inventory real property that is being leased and it is essential to the farming operation.

§ 767.103 Managing leased inventory real property.

(a) *Repairing leased property.* The Agency will pay for repairs to leased inventory real property only when necessary to protect the Agency's interest.

(b) *Handling income from leased inventory real property.* (1) The Agency will apply lease proceeds to the inventory property account.

(2) If the lessee purchases the inventory real property, the Agency will not credit lease payments to the purchase price of the property.

§§ 767.104–767.150 [Reserved]

Subpart D—Disposal of Inventory Property

§ 767.151 General requirements.

Subject to § 767.152, the Agency will attempt to sell its inventory property as follows:

(a) The Agency will advertise all inventory real property that can be used for any authorized FO loan purpose for sale to beginning farmers no later than 15 days after the Agency obtains title to the property. A beginning farmer may apply up through 135 days after the advertisement to purchase inventory property.

(b) If more than one eligible beginning farmer applies, the Agency will select a purchaser by a random selection process open to the public.

(1) All applicants will be advised of the time and place of the selection.

(2) All drawn offers will be numbered.

(3) Offers drawn after the first will be held in suspense pending sale to the successful applicant.

(4) Random selection shall be final and not subject to administrative appeal.

(c) If there are no offers from beginning farmers, the Agency will offer to sell inventory property by auction or sealed bid to the general public between days 136 and 165 after the Agency obtains title to the property. All bidders will be required to submit a 10 percent deposit with their bid.

(d) If the Agency receives no acceptable bid through an auction or sealed bid, the Agency will attempt to sell the property through a negotiated sale at the best obtainable price.

(e) If the Agency is not able to sell the property through negotiated sale, the Agency may list the property with a real estate broker. The broker must be properly licensed in the State in which the property is located.

§ 767.152 Exceptions.

The Agency's disposition procedure under § 767.151 is subject to the following:

(a) If the Agency leases inventory real property to a beginning farmer in accordance with § 767.101(a)(2), and the lease expires, the Agency will not advertise the property if the beginning farmer is approved to purchase the property and the Agency has direct or guaranteed loan funds available to finance the transaction.

(b) The Agency will not advertise a property for sale until the Homestead Protection rights have terminated in accordance with part 766, subpart D of this chapter.

(c) The Agency may allow an additional 60 days if needed for conservation easements or environmental contamination reviews.

(d) If Agency analysis of farm real estate market conditions indicates the sale of Agency farm inventory property will have a negative effect on the value of farms in the area, the Agency may withhold inventory farm properties in the affected area from the market until further analysis indicates otherwise.

§ 767.153 Sale of inventory real property.

(a) *Pricing.* (1) The Agency will advertise property for sale at its current market value, as established by an appraisal obtained in accordance with § 761.7, except for properties containing environmental risks in accordance with § 767.203(b).

(2) Property sold by auction or sealed bid will be sold for the best obtainable price. The Agency reserves the right to reject any and all bids.

(b) *Agency-financed sales.* The Agency may finance sales to purchasers if:

(1) The Agency has direct or guaranteed FO loan funds available;

(2) All applicable loan making requirements are met; and

(3) All non-beginning farmer purchasers make a 10 percent down payment.

(c) *Taxes and assessments.* (1) Property taxes and assessments will be prorated between the Agency and the purchaser based on the date the Agency conveys title to the purchaser.

(2) The purchaser is responsible for paying all taxes and assessments after the Agency conveys title to the purchaser.

(d) *Loss or damage to property.* If, through no fault of either party, the property is lost or damaged as a result of fire, vandalism, or act of God before the Agency conveys the property, the Agency may reappraise the property and set the sale price accordingly.

(e) *Termination of contract.* Either party may terminate the sales contract. If the contract is terminated, the Agency returns any deposit to the bidder or offeror.

(f) *Warranty on title.* The Agency will not provide any warranty on the title or on the condition of the property.

§ 767.154 Conveying easements, rights-of-way, and other interests in inventory property.

(a) *Appraisal of real property and real property interests.* The Agency will determine the value of real property and real property interests being transferred in accordance with § 761.7 of this chapter.

(b) *Easements and rights-of-way on inventory property.* (1) The Agency may grant or sell an easement or right-of-way for roads, utilities, and other appurtenances if the conveyance is in the public interest and does not adversely affect the value of the real property.

(2) The Agency may sell an easement or right-of-way by negotiation for market value to any purchaser for cash without giving public notice if:

(i) The sale would not prevent the Agency from selling the property; and

(ii) The sale would not decrease the value of the property by an amount greater than the price received.

(3) In the case of condemnation proceedings by a State or political subdivision, the transfer of title will not be completed until adequate compensation and damages have been determined and paid.

(c) *Disposal of other interests in inventory property.* (1) If applicable, the Agency will sell mineral and water rights, mineral lease interests, mineral royalty interests, air rights, and agricultural and other lease interests with the surface land except as provided in paragraph (b) of this section.

(2) If the Agency sells the land in separate parcels, any rights or interests that apply to each parcel are included with the sale.

(3) The Agency will assign lease or royalty interests not passing by deed to the purchaser at the time of sale.

(4) Appraisals of property will reflect the value of such rights, interests, or leases.

§ 767.155 Selling chattel property.

(a) *Method of sale.* (1) *Public auctions.* The Agency will use established public auctions for selling chattel. The Agency does not require public notice of sale in addition to the notice commonly used by the auction facility.

(2) *Concurrent sale of real and chattel inventory property.* The Agency may sell inventory chattel property, including fixtures, concurrently with inventory real estate if, by doing so, the Agency can obtain a higher aggregate price. The Agency may accept an offer for chattel based upon the combined final sales price of both the chattel and real estate.

(b) *Agency-financed sales.* The Agency may finance the purchase of inventory chattel property if the Agency has direct or guaranteed OL loan funds available and all applicable loan making requirements are met.

§§ 767.156–767.200 [Reserved]

Subpart E—Real Property with Important Resources, Special Hazard Areas and Environmental Risks

§ 767.201 Inventory real property with important resources.

In addition to the requirements established in 7 CFR 799, the following apply to inventory property with important resources:

(a) *Wetland conservation easements.* The Agency will establish permanent wetland conservation easements to protect and restore certain wetlands that exist on inventory property prior to the sale of such property, regardless of whether the sale is cash or credit.

(1) The Agency establishes conservation easements on all wetlands or converted wetlands located on inventory real property that:

(i) Were not considered cropland on the date the property was acquired by the Agency; and

(ii) Were not used for farming at any time during the five years prior to the date of acquisition by the Agency.

(A) The Agency will consider property to have been used for farming if it was used for agricultural purposes including, but not limited to, cropland, pastures, hayland, orchards, vineyards, and tree farming.

(B) In the case of cropland, hayland, orchards, vineyards, or tree farms, the Agency must be able to demonstrate that the property was harvested for crops.

(C) In the case of pastures, the Agency must be able to demonstrate that the property was actively managed for grazing by documenting practices such as fencing, fertilization, and weed control.

(2) The wetland conservation easement will provide for access to other portions of the property as necessary for farming or other uses.

(b) *Mandatory conservation easements.* The Agency will establish conservation easements to protect 100-year floodplains and other Federally designated important resources. Federally designated important resources include, but are not limited to:

(1) Listed or proposed endangered or threatened species;

(2) Listed or proposed critical habitats for endangered or threatened species;

(3) Designated or proposed wilderness areas;

(4) Designated or proposed wild or scenic rivers;

(5) Historic or archeological sites listed or eligible for listing on the National Register of Historic Places;

(6) Coastal barriers included in Coastal Barrier Resource Systems;

(7) Natural landmarks listed on National Registry of Natural Landmarks; and

(8) Sole source aquifer recharge areas as designated by EPA.

(c) *Discretionary easements.* The Agency may grant or sell an easement, restriction, development right, or similar legal right to real property for conservation purposes to a State government, a political subdivision of a State government, or a private non-profit organization.

(1) The Agency may grant or sell discretionary easements separate from the underlying fee or property rights.

(2) The Agency may convey property interests under this paragraph by negotiation to any eligible recipient without giving public notice if the conveyance does not change the intended use of the property.

(d) *Conservation transfers.* The Agency may transfer inventory real property to a Federal or State agency provided the following conditions are met:

(1) The transfer of title must serve a conservation purpose;

(2) A predominance of the property must:

(i) Have marginal value for agricultural production;

(ii) Be environmentally sensitive; or

(iii) Have special management importance;

(3) The Homestead Protection rights of the previous owner have been exhausted;

(4) The Agency will notify the public of the proposed transfer; and

(5) The transfer is in the Government's best financial interest.

(e) *Use restrictions on inventory real property with important resources.* (1) Lessees and purchasers receiving Agency credit must follow a conservation plan developed with assistance from NRCS.

(2) Lessees and purchasers of real property with important resources or real property interests must allow the Agency or its representative to periodically inspect the real property to

determine if it is being used for conservation purposes.

§ 767.202 Inventory real property located in special hazard areas.

(a) *Special hazard areas.* The Agency considers the following to be special hazard areas:

(1) Mudslide hazard areas;

(2) Special flood areas; and

(3) Earthquake areas.

(b) *Use restrictions.* (1) The Agency will use deed restrictions to prohibit residential use of properties determined to be unsafe in special hazard areas.

(2) The Agency will incorporate use restrictions in its leases of property in special hazard areas.

§ 767.203 Inventory real property containing environmental risks.

(a) *Environmental risks.* The Agency considers the following to be environmental risks:

(1) Hazardous waste;

(2) Petroleum products and underground storage tank systems;

(3) Medical waste;

(4) Lead-based paints; and

(5) Asbestos.

(b) *Remediation of environmental risk.* (1) The Agency will comply with all applicable Federal, State and local laws, ordinances, codes, and regulations.

(2) The Agency will consult with the appropriate environmental regulatory authority to determine State or local requirements for cleanup or corrective action.

(3) For inventory real properties containing hazardous waste and underground storage tank systems, the Agency will not conduct cleanup or take corrective actions unless:

(i) Any known contamination or underground storage tank leakage presents an immediate threat to the health and safety of neighboring property owners or potential purchasers of the property; or

(ii) The Agency is selling the property to a beginning farmer and providing credit assistance through direct or guaranteed loans.

(4) When the Agency will advertise the property for sale, the sales price of the property is the ''as improved value'' as determined by an appraisal.

(5) When the property is being sold back to the former owner-borrower, the Agency will not undertake corrective action.

(c) *Use restrictions on inventory real property containing environmental risks.* The Agency will not allow the use of underground storage tank systems on leased inventory properties.

§§ 767.205–767.250 [Reserved]

Subpart F—Exception Authority

§ 767.251 Agency exception authority.

On an individual case basis, the Agency may consider granting an exception to any regulatory requirement or policy of this part if:

(a) The exception is not inconsistent with the authorizing statute or other applicable law; and

(b) The Government's financial interest would be adversely affected by acting in accordance with published regulations or policies and granting the exception would resolve or eliminate the adverse effect upon the Government's financial interest.

§§ 767.252–767.300 [Reserved]

PART 768—[RESERVED]

PART 769—[RESERVED]

16. Add and reserve parts 768 and 769.

Signed in Washington, DC, on January 12, 2004.

James R. Little,

Administrator.

[FR Doc. 04–1891 Filed 2–6–04; 8:45 am]

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Federal Register

Monday,
February 9, 2004

Part IV

Securities and Exchange Commission

17 CFR Part 240

Competitive Developments in the Options Markets; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–49175; File No. S7–07–04]

RIN 3235–AJ15

Competitive Developments in the Options Markets

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Concept release; request for comments.

SUMMARY: This Concept Release discusses changes in the options markets that have occurred since the start of widespread multiple trading of options that have had the greatest impact on competition. It also seeks comment on whether the Commission should take any action to improve the efficiency of the options markets and mitigate the conflicts of interest that may be impeding price competition in those markets.

DATES: Comments should be received by April 9, 2004.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by hard copy or e-mail, but not by both methods. Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–07–04. This file number should be included in the subject line if e-mail is used. All comments received will be posted on the Commission's Internet Web site (*http://www.sec.gov*) and made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Elizabeth King, Associate Director, at (202) 942–0140, Richard Strasser, Attorney Fellow, (202) 942–0737, 450 Fifth Street NW., Washington, DC 20549–1001.

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I. Introduction

Competition among U.S. options exchanges dramatically expanded in the fall of 1999 when these markets began to compete by trading many of the same options products. This competition has had a number of benefits. Soon after this competition among the markets began, however, order entry firms started seeking opportunities to trade with their orders or be paid for their order flow from the competing markets. Since that time, payment for order flow and internalization of orders have become commonplace.

While there has been a great deal of informal discussion about the ways in which payment for order flow and internalization impact the options markets and other market participants, the Commission has not yet formally requested public comment on these and other similar practices, such as specialist participation guarantees, and whether these practices raise concerns. This Concept Release discusses the changes in the options markets since the start of widespread multiple trading of options that have had the greatest impact on competition. It also seeks comment on whether the Commission should take any action to improve the efficiency of the options market and mitigate the conflicts of interest that may be impeding price competition in those markets.

II. Overview of Recent Changes

A. Traditional Options Market Structure

Prior to the start of widespread multiple listing of equity options in 1999, the options exchanges then in operation (the American Stock Exchange (''Amex''), Chicago Board Options Exchange (''CBOE''), Pacific Exchange (''PCX'') and Philadelphia Stock Exchange (''Phlx''), collectively, ''floor-based options exchanges'') had priority rules that allocated trades among competing market participants on their floors. Some of these allocation methods were designed to enhance price competition, while others were designed to achieve other purposes, such as rewarding specialists or market makers for providing liquidity to the market.

To facilitate price competition on these markets, orders sent to the floors of each of the exchanges generally were exposed to an auction before a specialist and other market participants, including market makers and floor brokers in the crowd. Generally, contracts were allocated to the market participants in the following order: (1) The first identifiable bid or offer at the best price and (2) all other market participants on parity with the best bid or offer. This allocation principle was designed to promote price competition by rewarding market participants willing to set the best price.

Nevertheless, the options exchanges deviated from price-time priority to achieve other goals. For example, the exchanges developed specialist guarantees to reward specialists for committing capital on the exchange floor. Specialist guarantees give priority to a specialist over other market makers by allocating a certain percentage of each order to the specialist when that specialist's quote is equal to the best price quoted on the exchange.[1] In addition, the options exchanges provided limited opportunities for upstairs firms to trade with large

[1] *See infra* notes 46–50 and accompanying text.

customer orders where the crowd chose not to trade with them.[2]

In addition, the options exchanges developed automated execution (''auto-ex'') facilities to execute smaller orders quickly and efficiently at the prevailing bid or offer without first exposing those orders to an auction. These orders were automatically executed at the exchange's disseminated price, which in almost all cases was the price generated by the specialist's auto-quote.[3] Under a traditional options market structure, the specialist is the only market maker on the exchange with the capability to auto-quote, and these quotes are considered the quotes of all the market makers in the crowd.[4] Exchange rules generally permit a market maker to improve the price established by the specialist's auto-quote by announcing the better price in the crowd. The specialist (or an exchange quote reporter) then manually reflects this better price in the exchange's disseminated quote. This manual process is cumbersome, permitting market makers to improve the quote only in one series of an option at a time.[5] In addition, until recently, there was little incentive to improve the quote generated by the specialist's auto-quote because exchange rules allocating automatically executed orders did so regardless of whether a particular market maker improved the quote.[6]

B. Start of Multiple Listing

From 1977 until August 1999, most actively traded options were listed on only one exchange.[7] Moreover, unlike in equity securities, there is no over-the-counter market for standardized options. Consequently, firms had no choice as to where to send a customer's order for such singly listed options. The Commission has long held the view that multiple listing of equity options, subject to the Commission's oversight under the national market system, could spur competition among options markets to provide more efficient trading services resulting in lower transaction costs for investors.[8] To promote multiple listing, the Commission adopted Exchange Act Rule 19c–5 in 1989.[9]

Rule 19c–5 prohibits exchanges from having rules that limit their ability to list any stock options class because that options class is listed on another options exchange. Nevertheless, most options did not begin trading on multiple markets until August 1999.[10] Today, virtually all actively traded equity options trade on multiple markets, a development that has enhanced competition among the options exchanges.

C. A New Options Exchange

The launch of the International Securities Exchange (''ISE'') in May 2000, the first new exchange in over two decades, further intensified competition.[11] ISE introduced to the U.S. a market model for options in which multiple market makers on the exchange quote independently.[12] ISE's disseminated prices are the result of this intramarket competition.

Greater competition among options exchanges for order flow has manifested itself in many ways. Exchange transaction fees for customers have all but disappeared. Spreads are narrower. Markets have expanded and enhanced the services they offer and introduced innovations to improve their competitiveness. At the same time, inducements to order flow providers, including payment for order flow and internalization opportunities, have increased.

III. Impact of Enhanced Competition

A. Narrower Spreads

One of the most palpable results of enhanced competition in the options markets is the narrowing of spreads. Lower spreads can provide better prices for investors. In December 2000, the Commission staff issued the results of a preliminary study of one-week periods from August 1999 (a benchmark period prior to widespread multiple listing of actively traded options) and October 2000 (a benchmark period during which the actively traded options in the study were listed on more than one exchange) to determine, among other things, how multiple listing impacted quote competition and spreads in the options markets.[13] The staff found that average exchange-quoted spreads (*i.e.*, intraexchange spreads, representing the bid and the offer of one exchange) for the most actively traded options (*i.e.*, those under $20) decreased by 8% from the August 1999 period to the October 2000 period. Exchange-quoted spreads indicate how aggressively the market participants on individual exchanges

[2] *See infra* notes 51–53 and accompanying text. This release uses the term ''upstairs firm'' to mean a broker-dealer that is seeking to facilitate or trade with its own public customer's options order on an exchange upon which the broker-dealer is a member. The broker-dealer may or may not be affiliated with the specialist in the option issue that is the subject of the customer order.

[3] This release uses the term ''auto-quote'' to refer to an electronic system specialists and other market makers use that automatically monitors and instantly updates quotations using a mathematical formula measuring certain characteristics of the options and underlying interest. This formula is based on a number of components that impact the value of the option, such as volatility, interest rate, and dividend. *See, e.g.*, Phlx Rule 1080, Commentary .01(a)–(b).

[4] *See e.g.*, Exchange Act Release No. 47959 (May 30, 2003), 68 FR 34441, 34442 (June 9, 2003) (approving SR–CBOE–2002–05).

[5] *See, e.g.*, Exchange Act Release No. 45677 (March 29, 2002), 67 FR 16476 (April 5, 2002) (approving SR–CBOE–2002–07). Any member of the trading crowd who submits a manual quote that improves an exchange's disseminated quote is considered to be a responsible broker or dealer under Rule 11Ac1–1(c) under the Act and it must be firm for the price of its quote up to its disseminated size. Rule 11Ac1–1(b) under the Act requires the exchange that receives the manual quote to disseminate it. *Id.*

[6] *Id.* As discussed below, the floor-based options exchanges reached a settlement with the Commission resulting from an enforcement action that requires, among other things, that those exchanges amend their existing rules governing their automated quotation and execution systems to increase incentives to quote competitively. *See infra* note and accompanying text.

[7] In August 1999, 32% of equity options were traded on more than one exchange. By September 2000, that number had risen to 45%. Over the same period, the percentage of aggregate option volume traded on only one exchange fell from 60% to 15%. Exchange Act Release No. 43085 (July 28, 2000), 65 FR 47918, 47919 (August 4, 2000) (proposing to extend Exchange Act Rule 11Ac1–1 to options). According to the Options Clearing Corporation, by September 2003, 98.3% of equity options traded on more than one exchange. For a discussion of the early development of multiple trading in the options markets *see* Exchange Act Release No. 24613 (June 18, 1987), 52 FR 23849 (June 25, 1987) (proposing Exchange Act Rule 19c–5).

[8] *See, e.g.*, Exchange Act Release No. 22026 (May 8, 1985), 50 FR 20310 (May 15, 1985).

[9] *See* Exchange Act Release No. 26870 (May 26, 1989), 54 FR 23963 (June 5, 1989).

[10] For a discussion of some of the factors that may have contributed to the multiple listing of actively traded options, *see* ''Poachers take stock, then wait and watch for more options: CBOE's trading of Dell has put even more pressure on U.S. exchanges to abandon their 'gentlemen's agreement,' '' Financial Times p. 26 (August 26, 1999).

[11] The ISE trades 597 options issues. Trading in these issues across all options exchanges represents about 90% of options industry volume. *See http://www.iseoptions.com* (Dec. 14, 2003).

[12] Under ISE's rules, one Primary Market Maker (''PMM'') and at least two Competitive Market Makers (''CMMs'') are assigned to each options class traded on the exchange. ISE Rule 802(c). Among other obligations, a PMM must enter continuous, two-sided quotes in all of the options classes to which it is assigned. A CMM must participate in the opening and make markets and enter into any resulting transaction on a continuous basis in at least 60% of the options classes in the group of classes to which it is assigned. ISE Rule 804. CMMs are able to stream their quotes on ISE electronically. By contrast, until recently, the floor-based options exchanges' disseminated quotes represented only the auto-quote price of the specialist or specialist-equivalent. The other market makers could effect changes in that quote only through open outcry or through the manual entry of quotes. *See, e.g.*, Exchange Act Release No. 47676 (April 14, 2003), 68 FR 19865, 19866 (April 22, 2003) (SR–CBOE–2002–05, proposing to establish CBOE's hybrid trading system).

[13] Special Study: Payment for Order Flow and Internalization in the Options Markets, Office of Compliance Inspections and Examinations and Office of Economic Analysis (Dec. 2000) [''SEC Staff Special Study''].

are setting their quotes. Quoting across exchanges over this period showed a much more dramatic change. The trade-weighted consolidated national best bid and offer (''NBBO'')[14] spreads fell from $0.29 in August 1999 to $0.18 in October 2000, a decline of nearly 38%.[15]

The actual transaction costs that investors paid for their options executions (measured by effective spreads) also declined from the August 1999 period to the October 2000 period.[16] The average effective spread for options priced below $20 was $0.21 in August 1999 and $0.17 in October 2000, a decline of approximately 19%. The most dramatic decline, however, was witnessed in smaller orders (typically orders of 50 or fewer contracts). For those orders, which are eligible for automatic execution, the average effective spread fell from $0.26 in August 1999 to $0.17 in October 2000, a drop of nearly 35%.

Average realized spreads (another measure of trading costs) for options priced below $20 were $0.18 in August 1999 and $0.17 in October 2000.[17] Average realized spreads for larger orders (*i.e.*, those above 50 contracts and ineligible for automatic execution at that time) actually increased from $0.10 in August 1999 to $0.16 in October 2000 (a 60% increase). This increase partially offset a fall in the average realized spread for smaller orders in these options, which declined from $0.23 in August 1999 to $0.16 in October 2000, a drop of approximately 30%.

The findings of academic economic studies that have examined the substantial increase in multiple listing of active options since late 1999 are consistent with the Commission staff's findings.[18]

B. Marketplace Innovations

In addition to narrowing spreads, the expansion of multiple trading has led the options markets to implement market structure innovations designed to attract more order flow by enhancing the efficiency, transparency, and liquidity of their markets. Such innovations include increasing the automated processing of orders routed to the floor-based options exchanges, expanding access to exchanges' automated execution systems to include broker-dealer orders as well as customer orders, and displaying the size of trading interest in quotations. Finally, exchanges have implemented electronic systems that enhance intramarket competition by permitting market makers independently to auto-quote.

1. Expansion of Auto-Ex Systems

In response to evolving market structures, technological advances, and enhanced competition among the markets, options exchanges have made changes to their auto-ex systems. Initially, auto-ex systems were designed to provide instantaneous executions for small public customer orders. In response to competitive pressures and a growing demand for quicker and more efficient executions, the options exchanges began increasing the maximum number of contracts eligible for execution through their auto-ex systems.[19] After the start of multiple listing, the use of auto-ex systems has expanded significantly.

In 2000, all of the floor-based options exchanges simultaneously increased the maximum number of options contracts in an order eligible for automated execution from fifty to seventy-five contracts[20] and quickly increased the size again to 100 contracts.[21] In 2001, three of the options exchanges—Amex, Phlx, and PCX—increased their maximum guaranteed order size for automated execution to 250 contracts.[22] In 2003, Amex increased its maximum guaranteed order size for automated executions to 500 contracts.[23]

The competitive responses with respect to one of the most widely traded exchange-traded funds, QQQ, which

[14] The NBBO is the interexchange best bid or offer, where each side of the best bid and offer, regardless of the quoting exchange, is used. Although an NBBO was not calculated for the options markets at the time the study was conducted, the SEC staff calculated one for purposes of the study.

[15] The SEC Staff Special Study concluded that, in addition to multiple listing, the drop in the consolidated NBBO spread also could have been attributed, at least in part, to the entrance of ISE into the market at that time. *See* SEC Staff Special Study, *supra* note 13 at text accompanying notes 72–73.

[16] The effective spread is twice the absolute difference between the trade price and the midpoint of the bid-ask spread at the time the trade report was received by the Options Price Reporting Authority. The lower the effective spread, the lower the cost to the investor.

[17] The realized spread is a measure of trading costs, taking into account the informational impact of the trade. It compares execution prices to the bid/offer mid-point five minutes after the execution occurs, which provides a hypothetical measure of a trade's profitability to the executing broker. Effective spreads and realized spreads reflect the direct costs to investors of trading on a given options market.

[18] *See, e.g.*, Battalio, Robert, Brian Hatch, and Robert Jennings, ''Toward a National Market System for U.S. Exchange-Listed Equity Options,'' Journal of Finance, forthcoming (covering June 2000 to January 2002 and indicating that bid-ask spreads have declined since multiple listing of most active options) and De Fontnouvelle, Patrick, Raymond P.H. Fishe, and Jeffrey H. Harris, ''The Behavior of Bid-Ask Spreads and Volume in Options Markets During the Competition for Listings in 1999,'' Journal of Finance, Vol. 58, No. 6 pp. 2437–2463 (2003) (indicating that spreads became significantly narrower around August 1999 when a large number of options moved from single to multiple listing). The results of these studies are consistent with other research that studied earlier periods. *See, e.g.*, Mayhew, Stewart ''Competition, Market Structure, and Bid-Ask Spreads in Stock Option Markets,'' Journal of Finance v.57 n.2 (April 2002) pp. 931–958 (examining CBOE options from 1986 to 1997 and indicating that options listed on multiple exchanges had narrower spreads than those listed on a single exchange) and ''The Effect of Multiple Trading on the Market for OTC Options,'' SEC (1986).

[19] During the 1980s, options exchanges permitted orders in sizes of between five and ten options contracts to be executed through their auto-ex systems. *See, e.g.*, Exchange Act Release Nos. 21695 (Jan. 28, 1985), 50 FR 4823 (Feb. 1, 1985) (File No. SR–CBOE–84–30) (permitting automated executions of up to five contracts); 22015 (May 6, 1985), 50 FR 19832 (May 10, 1985) (File No. SR–CBOE–85–14) (permitting automated executions of up to ten contracts); and 27599 (Jan. 9, 1990), 55 FR 1751 (Jan. 18, 1990) (File No. SR–Phlx–89–03) (permitting automated executions of up to ten contracts). PCX allowed automated executions of up to ten contacts in 1993. *See* Exchange Act Release No. 32703 (July 30, 1993), 58 FR 42117 (August 6, 1993) (File No. SR–PSE–92–37).

Over the next decade, the maximum number of options contracts per order permitted for automated execution steadily increased from ten contracts to fifty contracts. *See, e.g.*, Exchange Act Release Nos. 24899 (Sept. 10, 1987), 52 FR 35012 (Sept. 16, 1987) (File No. SR–Amex–87–21); 28411 (Sept. 6, 1990), 55 FR 37784 (Sept. 13, 1990) (File Nos. SR–CBOE–89–27 and SR–CBOE–89–29); 29837 (Oct. 18, 1991), 56 FR 55146 (Oct. 24, 1991) (File No. SR–Phlx–91–33); and 34946 (Nov. 7, 1994), 59 FR 59265 (Nov. 16, 1994) (File No. SR–PSE–94–18); 32906 (Sept. 15, 1993), 58 FR 49345 (Sept. 22, 1993) (File No. SR–Phlx–92–38); 36601 (Dec. 18, 1995), 60 FR 66817 (Dec. 26, 1995) (File No. SR–Phlx–95–39); 41821 (Sept. 1, 1999), 64 FR 50313 (Sept. 16, 1999) (File No. SR–CBOE–99–17); 41823 (Sept. 1, 1999), 64 FR 49265 (Sept. 10, 1999) (File No. SR–PCX–99–04); and 42094 (Nov. 3, 1999), 64 FR 61675 (Nov. 12, 1999) (File No. SR–Amex–99–43).

[20] *See* Exchange Act Release Nos. 43516 (Nov. 3, 2000), 65 FR 69079 (Nov. 15, 2000) (File No. SR–Amex–99–45); 43517 (Nov. 3, 2000), 65 FR 69082 (Nov. 15, 2000) (File No. SR–CBOE–99–51); 43515 (Nov. 3, 2000), 65 FR 69114 (Nov. 15, 2000) (File No. SR–Phlx–99–32); and 43518 (Nov. 3, 2000), 65 FR 69111 (Nov. 15, 2000) (File No. SR–PCX–00–32).

[21] *See* Exchange Act Release Nos. 43887 (Jan. 25, 2001), 66 FR 8831 (Feb. 2, 2001) (File Nos. SR–Amex–00–57 and SR–PCX–00–18); 44008 (Feb. 27, 2001), 66 FR 13599 (March 6, 2001) (File No. SR–CBOE–01–03); 44054 (March 8, 2001), 66 FR 15314 (March 16, 2001) (File No. SR–Phlx–2001–31) (permitting automated executions of up to 100 contracts in QQQ options); and 44404 (June 11, 2001), 66 FR 32857 (June 18, 2001) (File No. SR–Phlx–2001–51) (permitting automated executions of up to 100 contracts in all options).

[22] *See* Exchange Act Release Nos. 45628 (March 22, 2002), 67 FR 15262 (March 29, 2002) (File No. SR–Amex–2001–94); 45641 (March 25, 2002), 67 FR 15445 (April 1, 2002) (File No. SR–PCX–2001–48); 45629 (March 22, 2002), 67 FR 15271 (March 29, 2002) (File No. SR–Phlx–2001–89) (permitting automated executions of up to 250 contracts in QQQ options); and 45893 (May 8, 2002), 67 FR 34746 (May 15, 2002) (File No. 2002–25) (permitting automated executions of up to 250 contracts in all options).

[23] *See* Exchange Act Release No. 47673 (April 14, 2003), 68 FR 19242 (April 18, 2003) (File No. SR–Amex–2003–08). Amex floor officials have the discretion to raise the auto-ex limit to 500 contracts on a case-by-case basis.

tracks the Nasdaq 100 Index, illustrate the fiercely competitive nature of the options markets since the start of multiple listing. In 2002, CBOE began allowing automated executions of up to 500 contracts in QQQ options.[24] Amex immediately matched the CBOE's proposal.[25] ISE soon announced that its Primary Market Maker in the QQQ options would guarantee a size of up to 2,000 contracts in the two near-term expiration months and up to 1,000 contracts for all other expiration months for customer orders in QQQ options. Amex soon matched ISE's move.[26] In late 2002, Phlx matched ISE's and Amex's maximum guaranteed automated execution order size for QQQ options.[27] In early 2003, PCX matched the other exchanges.[28]

In addition to increasing the size of public customer orders eligible for automated execution, in 2001, the options exchanges began permitting non-market maker broker-dealer orders to be executed through their respective auto-ex systems.[29]

2. Enhanced Automation of Trading on Floor-Based Exchanges

The floor-based options exchanges have also increased the automated handling of orders on their facilities. For example, Phlx, CBOE, and Amex enhanced the integration of their automated execution systems with their order books to enable incoming orders to trade automatically with booked orders that establish the prevailing market.[30] Similarly, several exchanges are automating the execution of orders on the book that lock or cross a quote generated by the exchange's auto-quote systems.[31] In addition, Amex automated the allocation of contracts between specialist and registered options traders under certain circumstances where the specialist would otherwise manually allocate such contracts.[32]

3. Displaying Size in Quotes

Displaying information about the size of options quotes is another recent enhancement in the options markets. Since its inception in May 2000, the ISE displayed quotations accompanied by size within its market. At that time, the Options Price Reporting Authority (''OPRA'') did not collect from the options exchanges and disseminate to quotation vendors the sizes associated with options quotations. In addition, the floor-based options exchanges did not independently display the sizes of their market participants' quotations.

In response to the increased transparency offered on ISE's electronic system, the floor-based exchanges began to implement technology to disseminate quotations with size. In addition, OPRA enhanced its systems to collect and disseminate quotations with size from the options exchanges. In 2001, each of the options exchanges began disseminating the size associated with their quotations through OPRA.[33]

4. Automated Systems That Enhance IntraMarket Quote Competition

ISE's electronic structure enables it to collect and disseminate competitive quotes from multiple market makers. Because ISE's market makers only trade with incoming orders when their quotes represent the best price,[34] they have a strong incentive to quote aggressively. As a result, ISE's disseminated prices represent the best quote of any market maker or priced order in the ISE order book and frequently set or match the best bid or offer in the market.[35]

Unlike the ISE, quotes on the floor-based options exchanges historically represented the auto-quotes of the specialists. These quotes, however, are considered the quotes of all market makers on the exchange. When orders are routed to a floor-based options exchange for automated execution, they generally trade at the auto-quoted price. Such orders are allocated to market makers in the crowd on a ''wheel,'' where they each take portions of an order in turn. Thus, market makers do not have an incentive, or even a practical ability, to improve the disseminated quote.

ISE soon began to capture market share from the other options exchanges. In response to competition from ISE and to comply with the terms of a settlement agreement the floor-based options exchanges reached with the Commission, the floor-based exchanges introduced new technology to their trading platforms to enhance the speed and efficiency of executions on those markets.[36] One of the more recent innovations is CBOE's hybrid trading platform, which it began rolling out in 2003. This new trading platform combines features of the open outcry

[24] *See* Exchange Act Release No. 45676 (March 29, 2002), 67 FR 16478 (April 5, 2002) (order approving File No. SR–CBOE–2001–70).

[25] *See* Exchange Act Release Nos. 45756 (April 15, 2002), 67 FR 19603 (April 22, 2002) (notice of filing and immediate effectiveness of File No. SR–Amex–2002–29).

[26] *See* Exchange Act Release No. 45828 (April 25, 2002), 67 FR 22140 (May 2, 2002) (File No. SR–Amex–2002–30).

[27] *See* Exchange Act Release No. 46531 (Sept. 23, 2002), 67 FR 61370 (Sept. 30, 2002) (File No. SR–Phlx–2002–47).

[28] *See* Exchange Act Release No. 47667 (April 10, 2003), 68 FR 19244 (April 18, 2003) (File No. SR–PCX–2003–14).

[29] *See* Exchange Act Release Nos. 45032 (Nov. 6, 2001), 66 FR 57145 (Nov. 14, 2001) (File No. SR–PCX–00–05); 46517 (Sept. 20, 2002), 67 FR 61182 (Sept. 27, 2002) (File No. SR–PCX–2002–50); 46479 (Sept. 10, 2002), 67 FR 58654 (Sept. 17, 2002) (File No. SR–Amex–2002–57); 45758 (April 15, 2002), 67 FR 19610 (April 22, 2002) (File No. Phlx–2001–40); 46660 (Oct. 15, 2002), 67 FR 64951 (Oct. 22, 2002) (File No. SR–Phlx–2002–50); 45967 (May 20, 2002), 67 FR 37888 (May 30, 2002) (File No. SR–CBOE–2002–22); 46113 (June 25, 2002), 67 FR 44486 (July 2, 2002) (File No. SR–CBOE–2002–35); and 46598 (Oct. 3, 2002), 67 FR 63478 (Oct. 11, 2002) (File No. SR–CBOE–2002–56).

[30] Exchange Act Release Nos. 48472 (Sept. 10, 2003), 68 FR 54513 (Sept. 13, 2003) (permits automated execution on Phlx of eligible inbound customer and off-floor broker-dealer limit orders against booked customer limit orders at the exchange's disseminated quote); 45244 (Jan. 7, 2002), 67 FR 1526 (Jan. 11, 2002) (allows certain orders entered through CBOE's order routing system to trade automatically against the book); and 42652 (April 7, 2000), 65 FR 20235 (April 14, 2000) (incoming market and marketable limit orders bypass Amex's auto-ex system and match against orders in the book).

[31] *See* Exchange Act Release Nos. 44462 (June 21, 2001), 66 FR 34495 (June 28, 2001) (approving CBOE proposal to allow orders on the book to be executed automatically where a quote generated by the exchange's auto-quote system is equal to or crosses the exchange's best bid or offer as established by a booked order); and 44468 (June 22, 2001), 66 FR 34505 (June 28, 2001) (approving PCX pilot program to allow automated execution of marketable limit orders against market makers when the limit orders are crossed or locked by PCX's auto-quote system). *See also* File No. SR–Phlx–2003–30 (Phlx proposal to execute automatically limit orders on the book when the exchange's auto-quote (or a specialist's quote) crosses or locks the exchange's best market as set by an order in the book).

[32] Exchange Act Release No. 45974 (May 22, 2002), 67 FR 37886 (May 30, 2002).

[33] *See* Exchange Act Release Nos. 44145 (April 2, 2001), 66 FR 18662 (April 10, 2001) and 44383 (June 2, 2001), 66 FR 30959 (June 8, 2001); and CBOE Regulatory Circular RG 01–50 (April 17, 2001).

[34] See ISE Exchange Approval, infra note 52, text accompanying nn. 93–94.

[35] The Commission's Office of Economic Analysis studied ten of the most actively traded options issues (AOL, Citigroup, Cisco, Dell, IBM, Microsoft, Intel Wrap, Pfizer, Peoplesoft, and QQQ Wrap) for the period of June 2–6, 2003 (prior to the implementation of CBOE's hybrid trading system, discussed below) and found that ISE was at the best bid and at the best offer in these options significantly more frequently than any other options exchange. The study also found that ISE was alone at the best bid and offer significantly more frequently than any other exchange. ISE was at the inside bid 87% of the time compared to 56% of the time for CBOE, the next closest competitor. ISE was at the inside ask 83% of the time (compared with 61% for CBOE, the next most frequent). ISE was alone at the inside bid 12% and alone at the inside ask 11% of the time (compared to CBOE's 3% and 5%, CBOE was the second most frequent in each).

[36] See, *e.g.*, ''CBOE Bets Streaming Quotes Will Cool ISE—The Chicago Board Options Exchange is launching a hybrid-trading system with streaming market-maker quotes to counter its all-electronic rival,'' Wall Street & Technology p. 41 (July 1, 2003). As discussed in Section V. E. infra, the enforcement settlement required the floor-based options exchanges, among other things, to amend their existing rules governing their automated quotation and execution systems to increase incentives to quote competitively.

market with an electronic, competing dealer model.[37]

As is the case with ISE's model, CBOE's hybrid trading platform allows market makers and designated primary market makers (''DPM's) (CBOE's specialist equivalent) to submit electronically quotes that represent their own trading interest. In addition, floor brokers in the crowd may enter orders on behalf of their customers. The best bid and offer among submitted market maker quotes and customer orders is disseminated as CBOE's best bid or offer. As such, the hybrid trading platform greatly expands the potential sources of intraexchange quote competition on CBOE.[38]

Preliminary research on the first group of securities phased into CBOE's hybrid platform shows a dramatic narrowing of quoted and effective spreads in those securities on CBOE. The Commission's Office of Economic Analysis examined average quoted and effective spreads of the first 22 options classes phased into CBOE's hybrid trading platform and found that average quoted spreads decreased from $0.2422 over the 20 trading days before each of the options was phased into the system, to $0.1929 in the 20 trading days after the options were phased in, a decrease of over 20%.[39] The average effective spread for these securities on CBOE decreased from $0.1170 to $0.0974, a decline of nearly 17%. Two control samples were used to ensure that these observed changes were not driven by other, coincidental changes in market conditions'quotes on the same options on the other exchanges, and quotes on other CBOE options that did not switch to the hybrid platform. No similar decrease in quoted and effective spreads was observed in the control sample.

Other registered options exchanges have developed their own innovative technology platforms. For example, in May 2003, the Commission approved PCX's new hybrid trading platform which will accommodate independent quotations from three types of market makers.[40] As they do today, Lead Market Makers (''LMMs'') would continue to provide two-sided markets throughout the trading day, while conducting their trading activities on the floor of the exchange. Remote Market Makers would be permitted to enter quotes and effect trades from off-site locations and to select their appointed issues. Floor Market Makers, which are registered market makers with basic obligations on the PCX options floor, would continue to trade as they do today and would supply independently generated quotes with size. Members could choose not to generate their own quote independently by acting as Supplemental Market Makers, which would add liquidity at the same price that is then being disseminated by the LMM. PCX began phasing in the new platform on October 6, 2003. Like the CBOE hybrid system, PCX's system should enhance intraexchange quote competition.

C. Payment for Order Flow, Specialist Guarantees, and Internalization

While encouraging innovations by options exchanges, multiple listing also resulted in competition among markets in the form of payment for order flow, enhanced specialist participation rights, and internalization. Unlike the forms of competition described above, which clearly benefit customers, these arrangements principally benefit intermediaries in the first instance, which may or may not pass on those benefits to their customers. The broad proliferation of these arrangements in the options markets followed widespread multiple listing of the most active options in 1999.[41]

When most options were traded on only one market, order entry firms had no choice where they routed their customers' orders for execution. As the number of trading venues for those options increased, however, order entry firms could choose between these venues in executing customers' orders. Indeed, where the same option trades on multiple venues, a broker-dealer's best execution obligation requires regular and rigorous review of execution quality. As a result, options markets and the market participants that trade there have sought to make their markets more attractive to order entry firms whose order flow they are attempting to attract. As discussed above, market participants have adapted to greater competition by tightening spreads and the exchanges themselves have done so by enhancing services.

At the same time, the specialists and market makers on the options markets have begun competing for order flow by offering cash or non-cash inducements, known as payment for order flow, to firms to send their orders to a particular exchange.[42] Another inducement exchanges use to attract order flow is permitting firms to trade with—or internalize—their own customers' orders. Both practices are a way to share the profit a dealer makes on a trade with the intermediary representing a customer order.

[37] Exchange Act Release No. 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003).

[38] For options that are not yet trading on the hybrid platform, CBOE's disseminated quote represents, for the most part, only the automatically generated quotations of the DPM. Market makers are able to impact the CBOE quote only in open outcry or by inputting quotes manually. As a result, there is virtually no intraexchange quote competition in CBOE options that are not trading on the hybrid platform.

[39] Because the 22 options classes were phased in over multiple days between June 12 and July 11, 2003, to compare spreads consistently it was necessary to assign event dates from ''20 to 20 to each of the classes. An event date of ''20 was the date 20 trading days before an option was phased into the hybrid platform. An event date of 0 was the date it was phased in, and an event date of 20 was the date 20 trading days after a class was phased in.

[40] *See, e.g.*, Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (order approving PCX's hybrid trading platform for options). See also SR–Phlx-2003–59 (proposal to establish a new Phlx electronic trading platform that would permit exchange members to submit streaming electronic option quotations via an electronic interface with Phlx's Automated Options Market System); and SR–Amex-2003–89 (proposing to establish a new trading system that would permit registered options traders to auto-quote independent of the specialist's quote).

[41] In its December 2000 study, the SEC staff examined the rise of payment for order flow arrangements in the options markets and found that the percentage of retail customer options orders that were paid for under a payment for order flow arrangement soared from August 1999, when virtually no orders were subject to such arrangements, to August 2000, when nearly 78% of such orders were. *See* SEC Staff Special Study, *supra* note 13. The staff found that cash payments were the most common form of payment for order flow in the options markets, although other inducements also were noted. For instance, some firms routed customer options orders to affiliated specialists. Firms that route order flow to an affiliated specialist are able to benefit through increased profits generated by that specialist, which does not have to pay cash for its affiliates' order flow. Other firms have entered into reciprocal order flow arrangements, under which each agrees to route customer order flow to the other.

[42] The Commission has defined payment for order flow broadly as ''any monetary payment, service, property, or other benefit that results in remuneration, compensation, or consideration to a broker or dealer from any broker or dealer, national securities exchange, registered securities association, or exchange member in return for the routing of customer orders by such broker or dealer to any broker or dealer, national securities exchange, registered securities association, or exchange member for execution, including but not limited to: research, clearance, custody, products or services; reciprocal agreements for the provision of order flow; adjustment of a broker or dealer's unfavorable trading errors; offers to participate as underwriter in public offerings; stock loans or shared interest accrued thereon; discounts, rebates, or any other reductions of or credits against any fee to, or expense or other financial obligation of, the broker or dealer routing a customer order that exceeds that fee, expense or financial obligation.'' 17 CFR 240.10b–10(d)(9). In the Commission staff's December 2000 study the staff concluded that while payment for order flow clearly impacted broker-dealers' order routing decisions, such arrangements had not, at that point, had a material adverse impact on effective spreads. The staff concluded that further monitoring of the arrangements was warranted. *See* SEC Staff Special Study, *supra* note 13.

1. Payment for Order Flow Arrangements

Under a typical payment for order flow arrangement, a specialist offers an order entry firm cash or other economic inducement to route its customer orders to that specialist's exchange because the specialist knows it will be able to trade with a portion of all incoming orders, including those from firms with which it has payment for order flow arrangements. The more dominant the specialist is on a particular exchange (*i.e.*, the fewer market makers with which it must compete for order flow), the more order flow it will trade with and the more it will be able to pay for order flow. Consequently, specialists benefit from exchange rules that guarantee the specialist the ability to trade with a certain percentage of the order flow for which they pay. Such ''specialist guarantees'' are discussed further below.

A specialist on an exchange where its role is less dominant (*i.e.*, where market makers in the crowd successfully compete with the specialist to trade with incoming orders), cannot, on its own, pay as much for order flow. For this reason, to compete, exchanges where there is substantial competition among market makers were the first to impose fees upon their members to fund payment for order flow collectively. Such exchange fees were designed to ensure that market makers that may trade with customers on the exchange contribute to the cost of attracting that order flow. Currently, all of the options exchanges have such ''exchange-sponsored payment for order flow programs'' in place.[43]

Section 19 of the Act and Rule 19b-4 adopted under the Act permit such payment for order flow arrangements to become effective upon filing and therefore do not require prior Commission approval because the arrangements impose fees that apply only to members of the exchange.[44] In soliciting public comment on one such proposal, the Commission noted that while it is concerned about payment for order flow generally, the Act provides a self-regulatory organization (''SRO'') wide latitude in imposing fees on its members.[45]

2. Specialist Guarantees

All five options exchanges currently have rules that guarantee a specialist a proportion of each order when its quote is equal to the best price on the exchange.[46] These so-called ''specialist guarantees'' reward market making firms willing to perform the obligations of a specialist by ensuring that they will be able to interact as principal with a certain percentage of incoming orders. Specialist guarantees are special allocation provisions that differ from the general rules of the exchanges that assign executions based on priority, parity, and precedence.[47] Specialist guarantees are intended to attract and retain well-capitalized firms that are responsible under exchange rules for assuring fair and orderly markets and fulfilling other responsibilities that enhance the exchange.

The Commission has closely scrutinized exchange rule proposals to adopt or amend a specialist guarantee where the percentage of specialist participation would rise to a level that could have a material adverse impact on quote competition within a particular exchange. For instance, in 2000 Phlx filed a proposal with the Commission to raise its specialist participation to 80% for certain options orders.[48] This specialist guarantee may have helped Phlx compete with other exchanges because its specialists, all things being equal, may have been able to pay more to attract order flow than other exchanges' specialists that received a lesser guarantee.

The Commission was concerned, however, that the Phlx proposal could have significantly discouraged price competition on that market by ''locking up'' such a large proportion of each order that it would have hindered market makers in the crowd from competing with the specialist. The Commission believed that, over the long-term, the decrease in intramarket competition could have widened spreads and diminished the quality of prices available to investors.[49] Moreover, the Commission was concerned that, if it approved the Phlx proposal, other exchanges could have proposed similar specialist guarantees to remain competitive,[50] thereby permanently undermining intramarket competition on each exchange. Phlx ultimately withdrew the proposal.

3. Internalization

Internalization opportunities are another form of economic inducement that exchanges use to attract order flow. One such arrangement is referred to as a facilitation guarantee, whereby an upstairs firm that brings a large customer order to the exchange (typically at least 50 contracts) may trade as principal with a certain percentage (up to 40%) of the contracts in that order under certain circumstances.[51] Exchanges use facilitation guarantees to induce upstairs firms to execute their customer orders on the exchange by limiting the degree to which the exchange crowd may interact with those orders. Like specialist guarantees, facilitation guarantees modify general exchange rules that assign executions based on priority, parity, and precedence, and like specialist guarantees and payment for order flow, exchange rules providing facilitation guarantees raise competitive and regulatory issues.

Prior to widespread multiple listing, exchange rules gave crowd participants precedence in trading with all orders. As a result, an upstairs firm could not trade with any portion of its customer's order with which crowd members wanted to trade. After August 1999, however, as the options markets began to list multiply the most actively traded options, competition among exchanges for incoming orders intensified, and the options exchanges adopted rules that provided upstairs firms more

[43] Exchange Act Release Nos. 48053 (June 17, 2003), 68 FR 37880 (June 25, 2003) (SR–Amex-2003–50); 47948 (May 30, 2003), 68 FR 33749 (June 5, 2003) (SR–CBOE–2003–19); 43833 (Jan. 10, 2001), 66 FR 7822 (Jan. 25, 2001) (SR–ISE–00–10); 43290 (Sept. 13, 2000), 65 FR 57213 (Sept. 21, 2000) (SR–PCX–00–30); and 47090 (Dec. 23, 2002), 68 FR 141 (Jan. 2, 2003) (SR–Phlx-2002–75).

[44] *See* Exchange Act Section 19(b)(3)(A)(ii) (15 U.S.C. 78s((b)(3)(A)(ii)) and Rule 19b–4(f)(2) (17 CFR 240. 19b–4(f)(2)). Within 60 days of filing of a proposal filed under Exchange Act Section 19(b)(3)(A), the Commission may summarily abrogate the proposal and require that the proposal be refiled (if at all) under Section 19(b)(1) of the Act, in which case the Commission must approve it prior to it becoming effective. *See* Exchange Act Section 19(b)(3)(C), 15 U.S.C. 78s(b)(3)(C).

[45] *See* Exchange Act Release No. 43290 (Sept. 13, 2000), 65 FR 57213, 57214–215 (Sept. 21, 2000) (notice of filing and immediate effectiveness of SR–PCX–00–30); *see also* Exchange Act Release Nos. 43112 (August 3, 2000), 65 FR 49040 (August 10, 2000) (notice of filing and immediate effectiveness of SR–CBOE–00–28) and 43833, 66 FR at 7825 (approving SR–ISE–00–10, imposing such fees is a legitimate business decision of the exchange).

[46] The term specialist is used in this release to include, in addition to specialists, DPMs, LMMs and PMMs.

[47] Each exchange has rules of priority, parity, and precedence that govern the order in which bids and offers participate in a transaction. For a discussion of exchanges' execution priority rules *see* Exchange Act Release No. 43100 (July 31, 2000), 65 FR 48778, 48785 (August 9, 2000) (File No. SR-Phlx–00–01, proposing to amend Phlx's enhanced specialist participation provisions) [''Notice of Phlx 80/20 Proposal'']

[48] The 80% provision would have applied to orders for the top 100 options based on volume allocated to a Phlx specialist after January 1, 1997 (*i.e.*, new allocations). Although the proposal had a number of provisions other than the 80% allocation provision, the Commission expressed particular concern with that provision. *Id.*, 65 FR at 48784.

[49] *Id.*

[50] *Id.* at 48789.

[51] Of course, if no other market participant on the exchange is willing to trade with a particular order, the upstairs firm may internalize the entire order.

opportunities to participate in the execution of certain customer orders they bring to the exchanges. For example, ISE adopted a rule in February 2000 that permits upstairs firms to interact as principal with up to 40% of orders of 50 contracts or more that the firm presents to the exchange after an auction and other conditions are satisfied.[52]

After the Commission approved ISE's proposal, each of the other options exchanges adopted similar rules.[53] To qualify for the guarantee, all require the facilitation orders to be at least 50 contracts, and the maximum guarantee right is 40% of the contracts in those orders. Moreover, if both a specialist and an upstairs firm would be entitled to a guarantee with respect to the same trade, the combined guarantee of the two firms may not exceed 40% of the contracts to be traded, thereby allowing the trading crowd to compete for at least 60% of any such transaction.[54] Unlike internalization in the over-the-counter equity market, the options exchanges' rules permit a firm to trade with its own customer's order only after an auction in which other members of that market have an opportunity to participate in the trade at the proposed price or an improved price. This auction provides some assurance that the customer's order is executed at the best price any member in that market is willing to offer.

IV. Concerns With Payment for Order Flow, Specialist Guarantees, and Internalization

While payment for order flow, specialist guarantees, and internalization are responses to a more competitive marketplace, critics assert that these practices are detrimental to the options markets because they can decrease quote competition, interfere with a broker-dealer's best execution obligation, and can conflict with a market's role as an SRO.[55]

A. Quote Competition

One concern frequently raised about payment for order flow arrangements is that they may diminish quote competition. Specifically, the concern is that a market maker or specialist that receives order flow because of a payment for order flow arrangement will have less need to quote aggressively to attract order flow, and as a result, spreads may be wider than they otherwise would be. A related argument is that payment for order flow arrangements raise costs for market makers and, as a result, the market makers may widen spreads to offset the costs of paying for order flow. Rules or practices that permit or encourage internalization may also reduce intramarket price competition and, therefore, cause spreads to widen.[56] In addition, because an upstairs firm can choose among several exchanges to send its order flow, market makers may be concerned that if they quote too aggressively, the upstairs firm facilitating its customers' orders may take those orders to another, less competitive, exchange where the upstairs firm could internalize a greater portion of those orders, possibly at prices that are inferior from the customers' perspective. The Commission requests comment on these concerns.

Question 1.To what extent, if any, does payment for order flow in the options markets affect a specialist's or market maker's incentive to quote aggressively?

Question 2. If commenters believe that payment for order flow diminishes a specialist's or market maker's incentives to quote aggressively, why have spreads narrowed over the past few years while payment for order flow increased?

Question 3. Where multiple market participants can quote independently and incoming orders are allocated to the market participant that sets the best quote, are market participants more or less likely to enter payment for order flow arrangements than those on markets with less intramarket quote competition?

Question 4. Do current exchange rules guaranteeing specialists a certain portion of orders affect quote competition? To what extent is intramarket quote competition preserved by requiring that non-specialist market makers be permitted to compete for at least 60% of an order without bettering the specialist's quote? Is the harm to quote competition, if any, decreased on those markets that permit market makers to auto-quote?

Question 5. Is a market maker's incentive to quote aggressively impacted by the percentage of orders that an upstairs firm can internalize? For example, all things being equal, is a market maker less likely to quote aggressively if exchange rules or customs permit an upstairs firm to internalize a substantial portion of each order that it brings to the exchange?

B. Best Execution

With respect to equity securities, the Commission has stated that a broker does not necessarily violate its duty of best execution by receiving payment for order flow (or internalizing its agency orders), but the duty also is not necessarily satisfied by routing orders to a market center that merely guarantees an execution at the NBBO.[57] Nevertheless, concerns have been raised that a broker that routes its customer orders to a particular market with which it has a payment for order flow arrangement may not be meeting its best execution obligations with respect to those orders.[58] Critics of payment for order flow arrangements assert that a broker that routes its customers' orders pursuant to such an arrangement is

[52] In the Matter of the Application of the International Securities Exchange, LLC For Registration as a National Securities Exchange, Release No. 42455 (Feb. 24, 2000) (''ISE Exchange Approval''). When an order is entered into the facilitation mechanism, ISE sends a facilitation broadcast to crowd participants informing them of the proposed transaction. The broadcast contains information on the terms and conditions of the order, including the facilitation price, and the crowd is given ten seconds to respond. The upstairs firm entering the facilitation order will be allocated 40% of the original size of the facilitation order, but only after better-priced orders, quotes, and public customer orders at the facilitation price are executed. In approving the ISE's rule, the Commission noted: ''It is difficult to assess the precise level at which guarantees may begin to erode competitive market maker participation and potential price competition within a given market. In the future, after the Commission has studied the impact of guarantees, the Commission may need to reassess the level of these guarantees. For the immediate term, the Commission believes that forty percent is not clearly inconsistent with the statutory standards of competition and free and open markets.'' *Id* at text accompanying nn. 118–119.

[53] *See* Exchange Act Release Nos. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000); 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000); 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000); and 47819 (May 8, 2003), 68 FR 25924 (May 14, 2003) (orders approving, respectively, File Nos. SR–CBOE–99–10; SR–PCX–99–18; SR–Amex–99–36; and SR–Phlx–2002–17).

[54] *See* Notice of Phlx 80/20 proposal, *supra* note 47, 65 FR at 48786.

[55] For a discussion of the concerns with payment for order flow, see SEC Staff Special Study, *supra* note 13. *See also* Phlx Petition, *infra* note 95 and Susquehanna Petition, *infra* note 96.

[56] *See* Exchange Act Release No. 43084 (July 28, 2000) 65 FR 48406, 48419 (August 8, 2000) (proposing Exchange Rules 11Ac1–5 and 11Ac1–6).

[57] Exchange Act Release No. 42450 (Feb. 23, 2000), 65 FR 10577, 10584 [''Fragmentation Release'']. A broker must take price (including opportunities for price improvement) into consideration in determining where to route its orders for execution, but price is not the only criteria that a broker may consider. It may also consider factors such as the trading characteristics of the security involved and the cost and difficulty of obtaining an execution in a particular market center, among other factors.

[58] The duty of best execution requires a broker to seek the most favorable terms reasonably available under the circumstances for a customer's transaction. *See, e.g.*, Exchange Act Release Nos. 43084, 65 FR at 48408 and 37619A (Sept. 6, 1996), 61 FR 48290, 48322 at text accompanying n. 349 (Sept. 12, 1996) (adopting Rule 11Ac1–4 and amending Rule 11Ac1–1 under the Act, also known as the Order Handling Rules).

more likely to be doing so to further its own self interest rather than the interests of its customers.[59]

Facilitation guarantees could also raise best execution concerns. Where a firm can profit by internalizing its customers' orders, it has an incentive to take those orders to an exchange that permits it, by rule or practice, to internalize the largest portion of its customers' orders. In the order approving ISE's exchange application, the Commission stated that a broker-dealer that withdraws ''a facilitated order that may be price improved simply to avoid executing the order at the superior price is a violation of a broker's duty of best execution.'' [60] The Commission acknowledged, however, that the intermarket nature of such conduct might make it difficult for any one market to detect and deter such abusive trading behavior. Nevertheless, the Commission stated that it expects the options markets to work together through the Intermarket Surveillance Group to develop methods and procedures to monitor their members' trading on other markets for possible best execution violations.[61]

Question 6. Do customer orders that are routed pursuant to payment for order flow arrangements ever receive less favorable executions than orders not subject to such arrangements? To what extent do exchanges' rules requiring that members avoid trading through better prices on other exchanges ensure that any order, regardless of the reason for its being routed to a particular exchange, receives at least the best published quotation price?

Some may argue that specialists in the options markets establish the prices and sizes of their quotes based in part on the assumption that their counterparties will be other professional traders. The desirability of trading with uninformed order flow due to the lower risks of trading with non-professionals should translate into those orders, on average, receiving better prices than the specialist's quote.[62] Under this argument, specialists may use payment for order flow as an indirect way of providing a better execution to uninformed or non-professional orders.

Question 7. Do market makers establish the price and size of their public quote based on the assumption that they may trade with an informed professional, which involves more risk than trading with an uninformed non-professional?

Question 8. If commenters agree that public quotes are based on the assumption that the market maker may trade with a professional, are such quotes wider than they would be if market makers only received uninformed, non-professional orders?

Question 9. Are market makers willing to trade with non-professional orders at prices better than their quote?

Question 10. If the Commission were to eliminate payment for order flow would non-professional orders get better prices?

Question 11. Do customer orders that are internalized in whole or in part on an exchange receive less favorable executions than orders that are not internalized? If so, why?

Question 12. Do exchange rules requiring that an auction occur prior to a trade ensure that internalized orders are executed at the best available price?

C. Conflicts Between the Roles of Market and SRO

An exchange is keenly interested in maximizing the order flow sent to its market because much of the revenue the exchange earns come from those orders. At the same time an exchange has an obligation to enforce its members' best execution obligations. Consequently, an SRO has a significant conflict in assessing whether an order sent to its market would have received a better execution on another market. Payment for order flow and internalization further heighten best execution and other regulatory concerns because of the conflict that a broker faces between its interests and those of its customer. An SRO that too closely scrutinizes whether its members are meeting their best execution obligations could risk driving the members to competing exchanges with less stringent enforcement procedures.

Exchange-sponsored payment for order flow arrangements raise the particular issue of whether an SRO, which regulates its member broker-dealers, can effectively carry out its regulatory obligations with respect to best execution enforcement when it also requires its market makers to pay fees which, by their nature, are to be used solely to pay firms to send orders to the exchange.

Question 13. Is an SRO's enforcement of its members' best execution obligation affected by the SRO's interest in attracting and retaining order flow from those same members?

Question 14. To what extent do payment for order flow practices generally, or exchange-sponsored payment for order flow specifically, exacerbate the conflict an SRO has in carrying out its obligation to enforce its members' best execution obligation?

Question 15. Does exchange-sponsored payment for order flow affect specialists' or market makers' incentives to quote aggressively differently than other types of payment for order flow? If so, in what respects?

Question 16. What safeguards, if any, should an options exchange have in place to ensure that it can carry out its regulatory responsibilities with respect to those of its members that accept payment for order flow or internalize trades? For example, would an independent SRO to oversee how brokers meet their best execution obligations be feasible and desirable?

V. Regulatory Initiatives

Traditionally, the Commission has not used restrictions on payment for order flow as a means to address concerns that the practice may raise. Instead, the Commission and the markets have taken steps to improve market transparency and price competition, which, in turn, are designed to address many of these concerns. As discussed below, these steps include implementing Exchange Act Rule 11Ac1–6, converting to decimal pricing, implementing an intermarket linkage, applying the Quote Rule to options, and removing certain barriers to transparency and competition as a result of the enforcement settlement between the Commission and the floor-based options exchanges.

A. Exchange Act Rule 11Ac1–6

Rule 11Ac1–6, adopted in November 2000, requires broker-dealers to publish quarterly reports detailing where they route their customer orders for execution and the relationship the broker-dealer has with the venues to which it routes those orders, including any profit-sharing or payment for order flow arrangements the broker-dealer may have with those venues.[63] This rule

[59] *See, e.g.*, letter to Harvey L. Pitt, Chairman, SEC, from William J. Brodsky, Chairman & CEO, CBOE, (Feb. 10, 2003) wherein CBOE stated: ''P[ayment] F[or] O[rder] F[low] can induce broker-dealers to decide to maximize firm profits by directing their orders to those markets paying the most for those orders.''

[60] ISE Exchange Approval, *supra* note at text accompanying n. 118.

[61] *Id.* at n. 118.

[62] Non-professional or uninformed traders may be less likely to understand the ''true'' value of a security and therefore may be willing to pay more for it or sell it for less than would a professional trader. For a discussion of informed and uninformed traders and payment for order flow, *see* Allen Ferrell, A Proposal for Solving Payment for Order Flow, 74 S. Cal. L. Rev. 1027, 1078–80 (May 2001).

[63] 17 CFR 240.11Ac1–6 (b)(1)(ii)–(iii). Exchange Act Release No. 43590 (Nov. 17, 2000), 65 FR 75413 (Dec. 1, 2000).

applies to transactions in options as well as those in equity securities. These quarterly reports provide investors with information about possible motivations a broker-dealer may have in routing its customers' orders to a particular venue. Rule 11Ac1–6 is limited, however, in that it does not provide information on the execution quality that a market center offers once it receives an order. That information is required for equity securities, but currently not for options, by Exchange Act Rule 11Ac1–5, which the Commission adopted at the same time as Rule 11Ac1–6.

Rule 11Ac1–5 requires each equity market center, including each exchange, to publish monthly reports detailing the execution quality that the market center provides for equity orders that are routed to it for execution. Rule 11Ac1–5 reports allow market participants to evaluate, among other things, which markets have the lowest spreads, which execute orders the quickest, and which are the most likely to price improve orders or to execute orders at prices inferior to the prevailing best bid or offer.

A recent study of NYSE-listed securities using Rule 11Ac1–5 reports found that ''reports based on SEC Rule 11Ac1–5 appear to have value beyond public trade and quote information available elsewhere.'' [64] The researchers found that the value of the reports ''qualifies industry complaints about the high cost of producing this data, because the additional price competition should benefit all market participants.'' The study further concluded that ''the Securities and Exchange Commission's emphasis on disclosure as a means of affecting public policy can produce beneficial effects for many market participants, at least in the case of equity trading. It appears that publishing standardized execution quality statistics encourages (coerces) brokers to consider these statistics in their routing decisions.'' The authors found that although ''brokers appear to use other, publicly available data for routing decisions prior to the SEC's enactment of the rule, the reliance on the 'non-official' statistics decreases after Rule 11Ac1–5 becomes effective.''

When it adopted Rule 11Ac1–5 and Rule 11Ac1–6, the Commission considered but decided not to apply Rule 11Ac1–5 to the options markets, stating:

> The Commission continues to believe that there is a need for improved disclosure of execution quality in the options markets, particularly now that there is widespread trading of options on multiple exchanges and expanding payment for options order flow. Nevertheless, potentially difficult issues would have to be addressed before options could be included within Rule 11Ac1–5. For example, a consolidated BBO is not, at this time, calculated and disseminated for options trading. A consolidated BBO is an essential element for nearly every statistical measure in the Rule, such as calculating price improvement and classifying types of limit orders (*e.g.*, inside-the-quote and at-the-quote limit orders). Although each exchange potentially could calculate its own consolidated BBO, the calculations might vary at times and fail to provide a uniform basis for comparable statistics. In addition, categorization of orders on a security-by-security basis would be much less practical for the options markets, where there may be hundreds of series of options for one underlying security.[65]

In the SEC staff study discussed above,[66] the staff made the following observations regarding market quality information available to broker-dealers in the options markets:

- Broker-dealers do not have adequate market execution quality information to compare reliably the quality of executions between specialist firms.
- The options exchanges are developing execution quality reports, but these reports may not enable broker-dealers that route customer orders adequately to compare execution quality on different options exchanges because each report uses different measures and methodologies to calculate execution quality.
- An NBBO would facilitate the creation of uniform measures of execution quality.
- Independent execution quality vendors have been unable to develop reliable execution quality reports for order routing firms because the exchanges have not provided them with adequate execution data.

Since the study was conducted, OPRA, which transmits quotations and trade reports from the options markets to vendors for dissemination to the public, has developed a consolidated NBBO data feed for the options markets that is available to vendors.[67] The NBBO that OPRA disseminates is the highest priced bid and the lowest priced offer quoted at the time on any of the five registered options exchanges.[68] The minimum price increment for purposes of the NBBO is no less than $0.05, and, absent a change in the NBBO, the minimum size increment for purposes of the NBBO is no fewer than 10 contracts.[69]

Below, the Commission seeks comments on whether it should extend Rule 11Ac1–5 to the options markets.

B. Decimals

On January 28, 2000, the Commission ordered the SROs to convert from fractional quotes to quotes in decimals.[70] The conversion from fractions to decimals for quotations in all equity securities and options was successfully completed on April 9, 2001.[71] As a result, the minimum quoting increment for equity securities narrowed from 1/16th of a dollar ($0.0625) to a penny ($0.01). The minimum quoting increment for option issues quoted under $3.00 a contract was set at $0.05 (down from 1/16th or $0.0625) and for options issues quoted at $3.00 and greater it was set at $0.10 (down from 1/8th or $0.125). Research conducted with respect to the equities markets supports the conclusion that the move to decimal pricing has contributed to a substantial decrease in spreads in the equities markets.[72] The

[64] Boehmer, Ekkehart, Robert Jennings, and Li Wei, Public Disclosure and Private Decisions: The Case of Equity Market Execution Quality (August 31, 2003 Draft), available at *http://www.nyse.com*. Wei is from the NYSE's Research Division. Boehmer was a Director of Research at the NYSE while the research for the study was being completed. The authors studied order-routing behavior for NYSE-listed stocks from June 2001 to February 2003 and found that market share was significantly negatively related to effective spreads and execution speed. They determined that this fact was consistent with the argument that brokers use information in Rule 11Ac1–5 reports to make order routing decisions. Based on the authors' estimates, a one-cent increase in effective spreads reduces monthly order flow by 522,060 shares for each stock traded. In addition, a one-second increase in execution speed resulted in a loss of 89,760 shares per stock. *Id.* at 17.

[65] Exchange Act Release No. 43590 (Nov. 17, 2000), 65 FR 75413 (Dec. 1, 2000).

[66] *See supra* notes 13–17 and accompanying text.

[67] Exchange Act Release Nos. 47231 (Jan. 22, 2003), 68 FR 4258 (Jan. 28, 2003) (order permanently approving OPRA's BBO proposal); and 46992 (Dec. 13, 2002), 67 FR 78031 (Dec. 20, 2002) (approving OPRA's BBO proposal for 120 days).

[68] If the same best-priced bid or offer is quoted on more than one exchange, the exchange that is quoting at that price for the largest number of options contracts will be identified by OPRA as the market that is quoting the best bid or offer. If the same best bid or offer for the same number of options contracts is quoted on more than one exchange, the exchange that was first in time to quote that bid or offer for that number of contracts will be identified as the market with the BBO.

[69] Markets may, consistent with their own exchange rules, disseminate bids and offers that improve the NBBO by less than $0.05, or that increase the size at a given quote by fewer than ten contracts. Such improvements, however, would not be reflected in the OPRA NBBO. As discussed further below, all of the registered options exchanges currently set the minimum quotation increment at $0.05 for option issues quoted under $3 a contract and at $0.10 for option issues quoted at $3 and greater. As a result, currently, no exchange member may quote an increment through one of the registered options exchanges that is less than $0.05. Accordingly, OPRA's NBBO reflects the best-priced quotations on the registered options exchanges.

[70] Exchange Act Release No. 42360 (Jan. 28, 2000), 65 FR 5003 (Feb. 2, 2000).

[71] Exchange Act Release No. 44568 (July 18, 2001), 66 FR 38390 (July 24, 2001).

[72] *See, e.g.*, The Impact of Decimalization on the Nasdaq Stock Market, Final Report to the SEC Prepared By Nasdaq Economic Research and Decimalization of Trading on the New York Stock Exchange: A Report to the Securities and Exchange

move to decimal pricing in the equities markets, and, in particular, the resulting narrowing of spreads, has been cited as one of the factors that has led to a decrease in the use of payment for order flow with respect to equity securities.[73]

Research is more limited, however, on the impact on spreads of the shift from quoting in fractions to quoting in decimals (and any resulting impact the shift might have had on payment for order flow) in the options markets.[74] While the Commission is not aware of any comprehensive studies showing how narrower spreads might impact payment for order flow in the options markets, experience in the equities markets suggests that, as the amount of profit a dealer can make from trading the spread declines, so too does the amount of money that dealer is willing to pay for attracting the orders with which it interacts.

It is conceivable that the same result could occur in the options markets if options were quoted in one-cent increments. In other words, widespread payment for order flow may suggest that current pricing in the options markets is inefficient. If payment for order flow is a symptom of inefficient pricing in the options markets, removing the five-cent and ten-cent minimum price increments in those markets might allow the markets to price options contracts more accurately, which could result in a narrowing of spreads. If spreads narrowed, each transaction would be worth less to market participants that profit from those spreads and, as a result, they would be less likely to pay to attract orders or else they would be willing to pay less to attract them. At the same time, however, penny pricing in the options markets could greatly increase quote traffic, which could diminish the quality and timeliness of options quotation information. Below, the Commission seeks comments on how penny pricing in the options markets could impact payment for order flow.

C. Intermarket Linkage

In early 2003, the options exchanges began sending orders through a linkage designed to facilitate the routing of orders between exchanges.[75] The intermarket linkage is based on the national market system principle that brokers should have the ability to reach easily a better price in another market to encourage efficient pricing and best execution of customer orders.[76] The linkage plan requires exchanges to avoid executing trades at prices inferior to the best available price (called a ''trade-through'').[77]

The linkage provides market participants with an automated means for accessing the best prices in the options markets, no matter which exchange is offering those prices at a given time. Moreover, by discouraging market participants from trading at prices inferior to the NBBO, the linkage will likely enhance price competition across markets.[78] Therefore, the linkage may help to ameliorate some of the competitive and best execution concerns that payment for order flow and internalization raise.[79]

D. Applying the Quote Rule to Options

In December 2000, the Commission amended Exchange Act Rule 11Ac1–1,[80] (''Quote Rule'') to apply it to options, in another move designed to improve market transparency and price competition in the options markets.[81] The Quote Rule requires national securities exchanges and associations to establish procedures for collecting from their members bids, offers, and quotation sizes for reported securities and for making that information available to vendors. The rule also

Commission (Sept. 7, 2001). *See also* Hendrik Bessembinder, ''Trade Execution Costs and Market Quality after Decimalization,'' Journal of Financial and Quantitative Analysis, forthcoming (finding that quoted and effective spreads declined substantially on Nasdaq and NYSE after decimalization).

[73] *See* ONLINE TRADING In Slow Times, Net Brokers Look For New Revenue, Investor's Business Daily, Section A, p.5 (August 3, 2001): ''Under decimals, the smallest spread between the bid and offer price for a stock is now just a penny. Prior to the Nasdaq's switch to decimals in April, spreads were at least 1/16, or .0625, of a dollar. That smaller spread is eating into the profit of market-makers like Knight Trading Group Inc. That's forced them to cut back on a practice called payment for order flow. In return for a commitment to send Knight much of their customers' orders, Knight has been paying brokerages up to a couple of dollars on each trade. Now that they're struggling to remain profitable, market-makers can't afford to pay out as much.'' *See also* comments of Bernard L. Madoff, Bernard L. Madoff Investment Securities LLC, at SEC Market Structure Hearing, October 29, 2002: ''I remember everybody saying ban payment for order flow. They're still saying ban payment for order flow. We don't even pay for order flow any longer, although we're considering going back to paying for order flow. [A]ll of these things are constantly resurfac[ing].''

[74] One industry study suggests that quoted and effective spreads for options decreased from the period before decimals to the period after decimal implementation. Report on the Impact of Decimal Pricing, prepared by CBOE (Sept. 10, 2001). CBOE studied certain options on securities listed on NYSE, Nasdaq and AMEX and found that quoted and effective spreads decreased from the pre-decimal to the post decimal period. CBOE discounted the results, however, given that spreads for a control group of securities that had shifted to decimals prior to the study period also declined over the period. CBOE further stated that the lack of a significant decline in spreads was expected given that the change in minimum quoting increments in the options markets (*i.e.*, from $0.0625 to $0.05 and from $0.125 to $0.10, depending on the price of the option) was much less dramatic than the change in the equity markets where the minimum quoting increment declined from $0.0625 to $0.01.

[75] On October 19, 1999, the Commission directed the options exchanges to file a national market system plan for linking the options markets. Exchange Act Release No. 42029 (Oct. 19, 1999), 64 FR 57674 (Oct. 26, 1999). The options exchanges submitted multiple plans on January 19, 2000. Exchange Act Release No. 42456 (Feb. 24, 2000), 65 FR 11402 (March 2, 2000). CBOE and Amex submitted identical plans. PCX and Phlx submitted plans that were distinct from the CBOE/Amex plan and from each other. On July 28, 2000, the Commission approved the plan proposed by Amex and CBOE, which ISE joined after the Commission approved its exchange application. Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (''Linkage Approval Order''). In November 2000, PCX and Phlx also joined that plan. Exchange Act Release Nos. 43573 (Nov. 16, 2000), 65 FR 70851 (Nov. 28, 2000) (admitting Phlx) and 43574 (Nov. 16, 2000) 65 FR 70850 (Nov. 28, 2000) (admitting PCX).

[76] *See* Exchange Act Section 11A(a)(1)(C)(iv). 15 U.S.C. 78k–1(a)(1)(C)(iv).

[77] Section 8(c) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'') states: ''The Participants agree that, absent reasonable justification and during normal market conditions, members in their markets should not effect Trade-Throughs.''

[78] The Linkage Plan does not prohibit one market from trading through a superior quote on another market. Rather, it requires market participants to avoid initiating a trade-through, unless an exception applies (*e.g.*, the bid or offer traded through was being disseminated from an exchange whose quotes were not firm with respect to that option class). In addition, under the Linkage Plan, if the party whose quote was traded through complains, the market participant that initiated the trade-through must (unless it cancels the offending trade) either (1) send an order through the linkage to satisfy the quote that was traded through or (2) correct the price of the trade that constituted the trade-through to a price at which a trade-through would not have occurred. The price correction must then be reported through OPRA. *See* Section 8 of the Linkage Plan. If a market participant receives an order when it is not quoting at the NBBO, it may execute the order at the NBBO without violating the Linkage Plan. Linkage Approval Order, 65 FR at 48026. Notwithstanding the lack of a trade-through prohibition in the Linkage Plan, a broker-dealer that exhibits a pattern or practice of initiating trade-throughs may be in violation of the securities laws and rules, including best execution principles and SRO rules regarding just and equitable principles of trade.

[79] *See* Linkage Approval Order, 65 FR at 48029.

[80] Exchange Act Rule 11Ac1–1, 17 CFR 240.11Ac1–1.

[81] Exchange Act Release No. 43591 (Nov. 17, 2000), 65 FR 75439 (Dec. 1, 2000). In addition to amending the Quote Rule to apply to options, the Commission adopted a trade-through disclosure rule. Under that rule, Exchange Act Rule 11Ac1–7, which the Commission repealed in December 2002, broker-dealers, with certain exceptions, were required to disclose to their customers the fact that the customers' orders to buy or sell listed options were executed at prices inferior to the best quotes that were published at the time the customers' orders were executed. The rule did not apply to customer orders that were executed on options markets that participated in an intermarket linkage plan approved by the Commission that had provisions reasonably designed to limit intermarket trade-throughs. *See id.*, 65 FR at 75443–47. *See also* Exchange Act Release No. 47013 (Dec. 17, 2002), 67 FR 79454 (Dec. 27, 2002) (repealing Rule 11Ac1–7).

requires that broker-dealers' quotations be firm, subject to certain exceptions.

The Quote Rule has applied in the equities markets since 1978.[82] The rule was not applied to options at that time, however, because they had only begun to trade a few years earlier.[83] Although each of the options exchanges had adopted rules requiring their market makers or specialists to have firm quotes for public customers, the rules did not extend to other market participants and were subject to exceptions unavailable in the Commission's Quote Rule.[84] In the release proposing to apply the Quote Rule to options, the Commission stated:

> The reliability and availability of quotation information are basic components of a national market system and are needed so that broker-dealers are able to make best execution decisions for their customers' orders, and customers are able to make order entry decisions. Quotation information has significant value to the marketplace as a whole because a quotation reflects the considered judgment of a market professional as to the various factors affecting the market, including current levels of buying and selling interest. Both retail and institutional investors rely on quotation information to understand the market forces at work at any given time and to assist in the formulation of investment strategies.
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> The Commission is proposing a firm quote rule for options [in conjunction with a trade-through disclosure rule] to ensure that the published quotes of options exchanges are accessible to orders from both customers and broker-dealers. Currently, the options exchanges' quotes need not be firm for broker-dealer orders. Therefore, market markers on an exchange may not be able to trade with quotes on competing exchanges even when these market makers are representing customer orders. Yet market makers are expected to match the prices on competing exchanges or to trade with those quotes, before trading at an inferior price. * * * A firm quote requirement for options is needed to ensure that these quotes will, in fact, be honored when orders are routed from other markets.[85]

E. Enforcement Settlement

The September 2000 regulatory settlement between Amex, CBOE, Phlx, PCX, and the Commission as well as a separate settlement between these exchanges and the Department of Justice were also designed to enhance transparency and competitiveness in the options markets.[86] Among other things, in the settlement with the Commission, the options exchanges agreed to remove or amend certain rules and procedures that may have hindered or prevented the multiple listing of options. For example, the exchanges were required to remove provisions from the Joint-Exchange Options Plan (''JEOP), which sets forth procedures that the options exchanges followed to list new options to reduce the amount of advance notice that an exchange was required to provide before it could begin trading an option that was already trading on another exchange.[87] In July 2001, the Commission approved a proposal filed by all of the options exchanges as well as the Options Clearing Corporation to replace the JEOP with the Options Listing Procedures Plan.[88]

Moreover, the exchanges agreed to adopt procedures that prevent the exchanges from threatening, harassing, or retaliating against their members that seek to trade options already traded on another exchange.[89] In addition, the exchanges agreed to make changes to the way in which OPRA acquires and allocates market data transmission capacity so that OPRA is not used as a means to limit the multiple listing of options.[90]

Finally, the settlement directs the exchanges to amend their then-existing rules governing their automated quotation and execution systems to increase incentives to quote competitively.[91] Some of the enhancements that have been implemented in connection with the Settlement Order are discussed in Section III B4 above.

VI. Additional Steps That Could Be Taken To Address Concerns About Payment for Order Flow, Specialist Guarantees, and Internalization

There are several possible regulatory alternatives that the Commission could pursue to address concerns with payment for order flow, specialist guarantees, and internalization. These alternatives range from taking no regulatory action at this point to banning these arrangements. The Commission seeks comments on the alternatives it could pursue to address concerns with these arrangements.

A. Should the Commission Take Action at This Point?

As discussed above, the options markets have undergone fundamental changes in the past few years. Options exchanges and market participants in those markets continue to adapt to the regulatory changes, including the implementation of an intermarket linkage plan, application of the Quote Rule, imposition of an order routing disclosure rule, and the requirement to price options in decimals. Competition among the options markets has led to the development of systems that permit greater intramarket competition, which has narrowed spreads. Some commentators have suggested that competitive forces in the options markets have shown themselves sufficient to increase the quality of execution and no further regulatory action is needed at this time.[92]

Question 17. Do recent regulatory changes together with competitive forces in the options markets make additional regulatory action at this time unnecessary?

Question 18. What would be the likely consequences to the options markets in terms of competition and execution quality should the Commission decide to take no regulatory action at this time? Specifically, do commenters believe that the current trend toward narrower spreads in the options markets could itself eliminate payment for order flow, specialist guarantees, and internalization?

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[82] *See* Exchange Act Release No. 14415 (Jan. 26, 1978), 43 FR 4342 (adopting Rule 11Ac1–1 for equity securities). *See also* Exchange Act Release No. 14711 (April 27, 1978), 43 FR 18556 (deferring effective date of rule to August 1978).

[83] Exchange Act Release No. 14415, *supra* note at n.49.

[84] *Id.* at 75442.

[85] Exchange Act Release No. 43085 (July 28, 2000), 65 FR 47918, 47925 (August 4, 2000).

[86] *See* Exchange Act Release No. 43268 (Sept. 11, 2000) (''SEC Settlement Order'') and *United States* v. *American Stock Exchange* LLC, et al, Proposed Order, Stipulation and Competitive Impact Statement, 65 FR 57829 (Sept. 26, 2000). In the SEC Settlement Order, the Commission found, among other things, that the options exchanges listed in the settlement failed to comply with Exchange Act Rule 19c—5 as incorporated into their respective rules by refraining from multiply listing certain options listed on a single exchange that were available for multiple listing. SEC Settlement Order at text accompanying n. 3.

[87] *See* SEC Settlement Order, *supra* note, 65 FR at 57840.

[88] Exchange Act Release No. 44521 (July 6, 2001), 66 FR 36809 (July 13, 2001).

[89] Exchange Act Release Nos. 43252 (Sept. 6, 2000), 65 FR 55653 (Sept. 14, 2000) (SR–Amex–00–50); 43253 (Sept. 6, 2000), 65 FR 55655 (Sept. 14, 2000) (SR–Amex–00–52); 43251 (Sept. 6, 2000), 65 FR 55658 (Sept. 14, 2000) (SR–CBOE–00–45); 44131 (March 29, 2001), 66 FR 18136 (April 5, 2001) (SR–PCX–01–11); and 44057 (March 9, 2001), 66 FR 15312 (SR–Phlx–01–03).

[90] On April 15, 2003, the options exchanges filed with the Commission a proposal to amend the OPRA plan to satisfy this obligation. *See* OPRA–2003–01.

[91] SEC Settlement Order, *supra* note 86, 65 FR at 57841.

[92] *See* Battalio *et al, supra* note. The authors suggest that the increased competition from multiple listing and the threat of regulatory action in the form of an intermarket linkage were sufficient to improve execution quality in the options markets to a level comparable to that of the equities markets and therefore additional regulation may not be required.

B. Should the Commission Require Brokers to Rebate All or a Portion of Payments They Receive?

One of the principal concerns about payment for order flow is that it creates a conflict with a broker's best execution obligation. Requiring brokers to rebate to their customers any payments they receive in exchange for routing those customers' orders to a particular exchange may mitigate much of the conflict.

Question 19. Should brokers that receive payment for order flow be required to rebate all or a certain portion of those payments to their customers or demonstrate that the economic benefit of payment for order flow has been passed on to customers? If so, how should the amount of any such rebate be determined, and how would a firm demonstrate that it passed the payment for order flow benefit to customers?

Question 20. How would any non-cash inducements to route order flow be valued for purposes of any such rebate?

C. Should the Commission Ban Payment for Order Flow, Specialist Guarantees, and Internalization?

The Commission could decide that payment for order flow, specialist guarantees, and internalization in the options markets impair the integrity of those markets and pose harm to investors and ban such arrangements or significantly limit them.

Question 21. What would be the effect of banning all payment for order flow arrangements in the options markets? If the Commission determined that a ban on payment for order flow were warranted, would a ban only on cash payments be sufficient or would non-cash inducements also have to be banned? If commenters believe that the Commission should impose such a ban, could such a ban be easily evaded in light of the numerous forms that payment for order flow arrangements can take?

Question 22. If the Commission were to ban all payment for order flow, but continue to permit firms to internalize their customers' orders, would it provide an unfair advantage to integrated firms that have customer order flow they can internalize? If a ban on payment for order flow unfairly advantaged integrated firms with broker and dealer operations, should the Commission revisit the issue of whether firms should be permitted to operate both as a broker and as a dealer for customer options orders? [93]

Question 23. Should the Commission ban some or all specialist guarantees and internalization (*i.e.*, dealer participation arrangements) in the options markets? Should any such ban only be done in conjunction with a ban on payment for order flow?

Question 24. What would be the impact, if any, on competition in the options markets if the Commission were to ban either payment for order flow or dealer participation arrangements without banning the other type of arrangement?

Question 25. What would be the impact of a complete ban on all such practices? For example, if the Commission banned payment for order flow and dealer participation arrangements, who would benefit? Would specialists and market makers quote better prices? Would they retain the economic benefit they now share with order entry firms? What effect would a ban have on non-dominant markets or firms seeking to attract order flow from the dominant market participants?

Question 26. In response to a recent request for the views of the options markets on payment for order flow arrangements, one of the markets stated that the Commission's review of payment for order flow and internalization should not be limited to the options markets but rather should include the equities markets as well.[94] Are there differences between the equities and options markets that warrant different treatment? If so, what are those differences? If different treatment is not warranted, should the Commission consider a market-wide ban on payment for order flow and dealer participation arrangements?

D. Should the Commission Ban Only Exchange-Sponsored Payment for Order Flow?

On February 3, 2003, Phlx filed with the Commission a petition for rulemaking that asks the Commission to ban exchange-sponsored payment for order flow programs, citing many of the concerns about payment for order flow discussed above.[95] Similarly, on June 11, 2003, Susquehanna International Group, LLP (''Susquehanna'') requested that the Commission exempt it from SRO rules that require it to contribute to exchange-sponsored payment for order flow programs.[96] In the alternative, Susquehanna requested that the Commission treat the exemptive application as a petition for rulemaking under Rule 192 of the SEC's Rules of Practice [97] to repeal transaction and marketing fees adopted by various options exchanges.

1. Phlx Petition

In its petition, Phlx asks the Commission to adopt a rule banning exchange-sponsored options payment for order flow programs.[98] According to Phlx, exchange-sponsored payment for order flow arrangements raise a number of concerns. First, Phlx believes that such arrangements can interfere with market forces by ''creating a known and stable price point (the exchange-mandated fee) that affects payment for order flow negotiations.''

Second, Phlx argues that exchange-sponsored payment for order flow arrangements can have detrimental effects on market makers by requiring them effectively to subsidize the specialists' order flow payments. Phlx contends that this subsidization raises costs for market makers, which, to cover those costs, may have to widen their spreads or reduce the level of liquidity they provide. Phlx believes that this subsidization is inconsistent with Section 11A of the Exchange Act, which requires fair competition among brokers and dealers.[99]

Finally, Phlx asserts that exchange-sponsored payment for order flow arrangements provide a potential disincentive for an SRO to police its members in complying with their regulatory obligations.

For these reasons, Phlx requests that the Commission adopt a rule that would prohibit: (1) An options exchange from

[93] *See* SEC, Report on the Feasibility and Advisability of the Complete Segregation of the Functions of Dealer and Broker (June 20, 1936) (''Segregation Study'').

[94] Letter to Harvey L. Pitt, Chairman, SEC from Salvatore F. Sodano, Chairman & CEO, Amex (Feb. 10, 2003).

[95] Letter to Jonathan G. Katz, Secretary, SEC, from Meyer S. Frucher, Chairman & CEO, Phlx, (Feb. 3, 2003), Petition for Rulemaking File No. 4–474, (''Phlx Petition'').

[96] *See* Letter to Jonathan G. Katz, Secretary, SEC, from Joel Greenberg, Chief Legal Officer, Susquehanna International Group, LLP, re Application for Exemptive Relief from Exchange Sponsored Payment for Order Flow Programs (June 11, 2003), Petition for Rulemaking File No. 4–474, (''Susquehanna Petition''). Susquehanna states that it is a market maker on every U.S. options exchange other than ISE, that it makes a market in 2000 options classes and acts as a specialist or designated primary market maker in some options classes.

[97] 17 CFR 201.192.

[98] *See* Phlx Petition, *supra* note. Phlx submitted its petition pursuant to Rule 192 of the Commission's Rules of Practice. 17 CFR 201.192. Phlx would exclude from its proposed prohibition payment for order flow arrangements made directly between individual exchange members or between an individual member and a non-member broker-dealer. It would also exclude programs or arrangements whereby an exchange provides its members with volume discounts or rebates or programs in which the exchange shares market data revenues with its members.

[99] 15 U.S.C. 78k–1.

organizing, sponsoring, or administering a payment for order flow program in connection with the routing of options orders; (2) an options exchange from imposing fees or assessments to fund payment for order flow payments in connection with the routing of options orders; and (3) an options exchange member from participating in any options payment for order flow program that is organized, sponsored, or administered by an options exchange or by any group or association of unaffiliated members.

2. Susquehanna Request

In its letter, Susquehanna asks the Commission, by rulemaking or order, to exempt it from SRO rules that require Susquehanna and other similarly situated firms to contribute to exchange-sponsored payment for order flow programs. Susquehanna argues that such programs are detrimental to the markets and market participants in a number of respects. For example, Susquehanna believes that forcing market makers to participate in the programs will ultimately cause them to widen their spreads to pay for the programs, which will raise investors' transaction costs. Susquehanna also believes that such programs place exchange market makers at a competitive disadvantage versus market participants that are not members of the exchange, which are not required to pay the exchange-imposed fees. Susquehanna contends that exchange-sponsored payment for order flow programs, the fees of which are assessed on a per contract basis, unfairly discriminate against firms such as Susquehanna, which transact a large number of contracts. Moreover, Susquehanna argues that exchange-sponsored payment for order flow arrangements drain market maker resources away from other services that they could offer to their customers, such as improvements in products, technology, customer service, and communications.

In addition, Susquehanna contends that such programs create a conflict of interest for SROs that administer the programs at the same time they are tasked with ensuring that their members meet their best execution obligations. The firm also contends that such programs damage investor confidence by leading investors to believe that their orders are routed to the venues that pay for order flow rather than to those venues that offer the best price or other execution terms. Finally, Susquehanna contends that such programs can be administered in an arbitrary and potentially discriminatory manner. For all of these reasons, Susquehanna requests that the Commission exempt it (and similarly situated firms) from all such exchange-sponsored payment for order flow programs.

The Commission seeks comment generally on the Phlx Petition and on the Susquehanna Petition and specifically is requesting comments on the following issues raised in those petitions.

Question 27. What would be the effect on the options markets and market participants if the Commission were to restrict only those payment for order flow arrangements that are sponsored or sanctioned in some way by a registered options exchange, as Phlx has proposed in its petition? In particular, would such a restriction favor a specialist that can be assured of trading with the largest proportion of order flow routed to its exchange? In other words, would such a ban unfairly disadvantage an exchange on which market makers compete more aggressively with the specialist?

Question 28. Would banning exchange-sponsored programs, while continuing to permit other types of payment for order flow and dealer participation arrangements, address the concerns discussed above regarding wider spreads, best execution, and SRO conflicts of interest?

E. Should the Commission Establish Uniform Rules and Enforcement Standards Regarding Internalization and Specialist Guarantees?

With respect to facilitation guarantees, the Commission has stated that it is a violation of a broker-dealer's best execution obligation to withdraw a facilitated order that may be price improved on one market to avoid executing the order at the superior price.[100] CBOE contends, however, that in the absence of uniform rules and policies across all options exchanges that would curb such trading behavior, none of the options exchanges is able, on its own, to prevent it. CBOE contends that industry efforts over the past several months to address potentially abusive facilitation practices have been unsuccessful due to the exchanges' varying views regarding these issues. Therefore, CBOE has asked the Commission to impose uniform rules and enforcement standards that would apply in this area. In particular, CBOE recommends that the Commission take action to ensure that ''options exchanges' rules allow an executing broker to participate with some portion of its customer's order only if [the] order has been exposed first to the market in a manner that provides a meaningful opportunity for price improvement.'' [101]

Question 29. Should the Commission take action, as CBOE recommends, to prohibit a broker from internalizing all or part of its customers' orders if those orders have not first been exposed to the market in a manner that provides what CBOE terms ''a meaningful opportunity'' for price improvement? What would constitute ''a meaningful opportunity'' for price improvement? [102]

Question 30. Do the options exchanges' current rules requiring that an order first be exposed to an auction before a firm can internalize it provide a meaningful opportunity for price improvement?

Question 31. What improvements could be made to the current framework for cross-market surveillance in the options markets to improve the ability of SROs to bring a best execution case against a broker that presents an order to be facilitated on one market and cancels that order, later executing it at an inferior price on another market?

Question 32. Are there other practices, occurring frequently with respect to facilitation guarantees that are inconsistent with best execution obligations? For example, are there circumstances under which an upstairs firm should not be permitted to ''shop'' an order it is seeking to facilitate at more than one exchange to determine where it can get the most favorable terms for that order?

Question 33. Are the options exchanges' rules with respect to facilitation guarantees (and the application of those rules) consistent regarding which conduct should and should not be permitted?

F. Should the Commission Apply Rule 11Ac1–5 to Options?

In 2000, when the Commission deferred applying Rule 11Ac1–5 to

[100] *See supra* note 60 and accompanying text.

[101] Letter to Harvey L. Pitt, Chairman, SEC, from William J. Brodsky, Chairman & CEO, CBOE (Feb. 10, 2003).

[102] For point of reference, *see* Exchange Act Release No. 46514 (Sept. 18, 2002), 67 FR 60267 (Sept. 18, 2002) (order approving File No. SR–ISE–2001–19 regarding facilitation of customer orders, wherein the Commission stated its belief that: ''in the ISE's fully automated market, a 10-second response period will afford electronic crowds sufficient time to compete for customer orders submitted by an E[lectronic] A[ccess] M[ember] into the Exchange's Facilitation Mechanism, thereby promoting just and equitable principles of trade, protecting investors and the public interest, and not imposing any burden on competition'' and ''the Commission believes that the timeframes necessary for exposure and execution of orders be adjudged in light of that marketplace's model. For this reason, the Commission does not believe that a fully automated market such as the ISE should be tied to timeframes relevant to the procedures of a floor-based exchange.'')

options, it noted ''potentially difficult issues would have to be addressed before options could be included within Rule 11Ac1–5.'' These issues include the creation of an NBBO for the options markets and the practical problem of the categorization of orders on a security-by-security basis, given that there may be hundreds of series of options for each underlying equity security. The Commission continues to believe that execution quality information benefits investors and other market participants in determining which markets offer the type of execution that they value.

As discussed above, OPRA has begun offering vendors an NBBO for the options markets, thereby removing one of the key obstacles to extending Rule 11Ac1–5 to options. Although the OPRA NBBO is somewhat limited in that it does not reflect price changes of less than $0.05 or update size changes of fewer than 10 contracts (in the absence of a price change), it would appear to provide options exchanges with a standardized NBBO that would permit them to make the calculations required by Rule 11Ac1–5.[103]

Question 34. Would Rule 11Ac1–5 data be useful to firms routing customers' options orders to exchanges and to those customers?

Question 35. If Rule 11Ac1–5 data would be useful for options orders, what adjustments, if any, would options market centers need to make to calculate and disseminate Rule 11Ac1–5 statistics? For example, is the OPRA NBBO a sufficient measure to enable market centers to make the Rule 11Ac1–5 calculations that require a consolidated BBO? If not, what changes would need to be made to the OPRA NBBO to make it suitable for such calculations?

Question 36. Are there other reasons why Rule 11Ac1–5 should not be applied to the options markets? For example, do the anticipated benefits of having better execution quality information for the respective options market centers justify the costs that the market centers would incur in calculating and disseminating the Rule 11Ac1–5 statistics?

[103] For example, Rule 11Ac1–5 requires market centers to disseminate for market orders and marketable limit orders the average effective spread for executions of orders covered by the rule. The ''average effective spread'' is the share-weighted average of effective spreads for order executions calculated, for buy orders, as double the amount of difference between the execution price and the midpoint of the consolidated best bid and offer at the time of order receipt. *See* Rule 11Ac1–5 (a)(2).

G. Would Penny Quotes in Options Reduce Payment for Order Flow?

The Commission believes that an argument can be made that payment for order flow may be a symptom of a broader problem of an inefficient market that can be rectified only by better aligning the quoting increments of the options markets with those of the equities markets. With few exceptions, the U.S. equities markets quote in minimum increments of one cent, while the options markets continue to quote in ten-cent increments for options priced $3.00 and over and five-cent increments for options priced under $3.00. As discussed above, research with respect to equity securities has indicated that the move to penny increments has greatly reduced spreads in equities,[104] which, in turn, appears to have played a role, at least in the short-term, in reducing payment for order flow. The same result could occur with respect to options if the minimum pricing increment decreased to one cent.

Question 37. If options were quoted in penny increments, would payment for order flow in the options markets cease or be diminished?

Question 38. Would a move to penny quoting in the options markets place an undue strain on existing system capacity? If so, which market participants would be most negatively impacted (*e.g.*, broker-dealers, exchanges, vendors)?

Question 39. If so, are there ways to alleviate potential strains on system capacity to allow the options markets to begin quoting in penny increments?

Question 40. Are there other issues that make a move to penny quoting in the options markets infeasible or inadvisable? For example, what would be the impact on the rapidity of quote changes (*i.e.*, ''flickering quotes'')?

Question 41. If exchanges required brokers to pay directly for the capacity that they use, would the brokers quote more efficiently, and thereby make a move to penny pricing in the options markets more feasible?

H. Should the Commission Apply the Limit Order Display Rule to Options?

As discussed above, in December 2000, the Commission extended the Quote Rule to the options markets. Exchange Act Rule 11Ac1–4 (''Limit Order Display Rule''),[105] a rule that complements the Quote Rule and that is in place in the equities markets, does not currently apply to options. Adoption of the Limit Order Display Rule, as well as other order handling rules, in the equity markets dramatically narrowed spreads as customer limit orders began to compete with the quotes of market professionals to set the best prices in the market.[106]

With certain exceptions, Rule 11Ac1–4 requires, among other things, that specialists and over-the-counter market makers immediately publish customer limit orders that improve the specialist's or market maker's quote in a particular security.[107] While certain of the options exchanges have proposed rules that would require the immediate display of customer limit orders,[108] currently there is no uniform limit order display requirement that applies across the options markets. Nevertheless, the increase in intramarket competition brought about by certain of the market structure changes discussed above could suggest that a uniform limit order display rule should apply to the options markets.

Question 42. Should the Commission apply a limit order display obligation to the options markets?

Question 43. Would the benefits of a uniform display requirement justify the costs of imposing such an obligation on options market participants?

Question 44. Do the options markets have unique characteristics that would make the application of a uniform limit order display obligation there less feasible than in the equities markets? If so, what are those characteristics?

Question 45. If a limit order display obligation would be beneficial for the options markets, what modifications, if any, to Rule 11Ac1–4, would be required before it could be applied to options market participants?

Question 46. If a uniform limit order display requirement is not appropriate for the options markets, are there other safeguards that could be put in place to ensure that customer limit orders are immediately displayed?

[104] *See supra* note 72 and accompanying text.

[105] 17 CFR 240.11Ac1–4.

[106] NASD found that, as a result of the Limit Order Display Rule and other market structure changes implemented at the time, quoted spreads in the securities NASD studied declined, on average, by forty-one percent. Effective spreads declined, on average, by twenty-four percent. *See* NASD Economic Research, Market Quality Monitoring: Overview of 1997 Market Changes (March 17, 1998).

[107] 17 CFR 240.11Ac1–4(b). In the alternative, the specialist or market maker may, among other things, immediately execute the limit order or route it to another market center that will display it. 17 CFR 240.11Ac1–4(c).

[108] *See, e.g.*, Exchange Act Release Nos. 43126 (August 7, 2000), 65 FR 49621 (August 14, 2000) (seeking public comment on File No. SR–Phlx–00–34) and 43550 (Nov. 13, 2000), 65 FR 69979 (Nov. 21, 2000) (seeking public comment on File No. SR–PCX–00–15). *See also* File No. SR–Amex–00–27.

VII. Solicitation of Additional Comments

In addition to the areas for comment identified above, we are interested in any other issues that commenters may wish to address relating to the options markets. Please be as specific as possible in your discussion and analysis of any additional issues. Where possible, please provide empirical data or observations of market trends to support or illustrate your comments.

By the Commission.

Dated: February 3, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–2646 Filed 2–6–04; 8:45 am]

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§§ 1.61–1.169	(869–050–00079–2)	63.00	Apr. 1, 2003
§§ 1.170–1.300	(869–050–00080–6)	57.00	Apr. 1, 2003
§§ 1.301–1.400	(869–050–00081–4)	46.00	Apr. 1, 2003
§§ 1.401–1.440	(869–050–00082–2)	61.00	Apr. 1, 2003
§§ 1.441–1.500	(869–050–00083–1)	50.00	Apr. 1, 2003
§§ 1.501–1.640	(869–050–00084–9)	49.00	Apr. 1, 2003
§§ 1.641–1.850	(869–050–00085–7)	60.00	Apr. 1, 2003
§§ 1.851–1.907	(869–050–00086–5)	60.00	Apr. 1, 2003
§§ 1.908–1.1000	(869–050–00087–3)	60.00	Apr. 1, 2003
§§ 1.1001–1.1400	(869–050–00088–1)	61.00	Apr. 1, 2003
§§ 1.1401–1.1503–2A	(869–050–00089–0)	50.00	Apr. 1, 2003
§§ 1.1551–End	(869–050–00090–3)	50.00	Apr. 1, 2003
2–29	(869–050–00091–1)	60.00	Apr. 1, 2003
30–39	(869–050–00092–0)	41.00	Apr. 1, 2003
40–49	(869–050–00093–8)	26.00	Apr. 1, 2003
50–299	(869–050–00094–6)	41.00	Apr. 1, 2003
300–499	(869–050–00095–4)	61.00	Apr. 1, 2003
500–599	(869–050–00096–2)	12.00	[5] Apr. 1, 2003
600–End	(869–050–00097–1)	17.00	Apr. 1, 2003

Title	Stock Number	Price	Revision Date
27 Parts:			
1–199	(869–050–00098–9)	63.00	Apr. 1, 2003
200–End	(869–050–00099–7)	25.00	Apr. 1, 2003
28 Parts:			
0–42	(869–050–00100–4)	61.00	July 1, 2003
43–End	(869–050–00101–2)	58.00	July 1, 2003
29 Parts:			
0–99	(869–050–00102–1)	50.00	July 1, 2003
100–499	(869–050–00103–9)	22.00	July 1, 2003
500–899	(869–050–00104–7)	61.00	July 1, 2003
900–1899	(869–050–00105–5)	35.00	July 1, 2003
1900–1910 (§§ 1900 to 1910.999)	(869–050–00106–3)	61.00	July 1, 2003
1910 (§§ 1910.1000 to end)	(869–050–00107–1)	46.00	July 1, 2003
1911–1925	(869–050–00108–0)	30.00	July 1, 2003
1926	(869–050–00109–8)	50.00	July 1, 2003
1927–End	(869–050–00110–1)	62.00	July 1, 2003
30 Parts:			
1–199	(869–050–00111–0)	57.00	July 1, 2003
200–699	(869–050–00112–8)	50.00	July 1, 2003
700–End	(869–050–00113–6)	57.00	July 1, 2003
31 Parts:			
0–199	(869–050–00114–4)	40.00	July 1, 2003
200–End	(869–050–00115–2)	64.00	July 1, 2003
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–050–00116–1)	60.00	July 1, 2003
191–399	(869–050–00117–9)	63.00	July 1, 2003
400–629	(869–050–00118–7)	50.00	July 1, 2003
630–699	(869–050–00119–5)	37.00	[7] July 1, 2003
700–799	(869–050–00120–9)	46.00	July 1, 2003
800–End	(869–050–00121–7)	47.00	July 1, 2003
33 Parts:			
1–124	(869–050–00122–5)	55.00	July 1, 2003
125–199	(869–050–00123–3)	61.00	July 1, 2003
200–End	(869–050–00124–1)	50.00	July 1, 2003
34 Parts:			
1–299	(869–050–00125–0)	49.00	July 1, 2003
300–399	(869–050–00126–8)	43.00	[7] July 1, 2003
400–End	(869–050–00127–6)	61.00	July 1, 2003
35	(869–050–00128–4)	10.00	[6] July 1, 2003
36 Parts			
1–199	(869–050–00129–2)	37.00	July 1, 2003
200–299	(869–050–00130–6)	37.00	July 1, 2003
300–End	(869–050–00131–4)	61.00	July 1, 2003
37	(869–050–00132–2)	50.00	July 1, 2003
38 Parts:			
0–17	(869–050–00133–1)	58.00	July 1, 2003
18–End	(869–050–00134–9)	62.00	July 1, 2003
39	(869–050–00135–7)	41.00	July 1, 2003
40 Parts:			
1–49	(869–050–00136–5)	60.00	July 1, 2003
50–51	(869–050–00137–3)	44.00	July 1, 2003
52 (52.01–52.1018)	(869–050–00138–1)	58.00	July 1, 2003
52 (52.1019–End)	(869–050–00139–0)	61.00	July 1, 2003
53–59	(869–050–00140–3)	31.00	July 1, 2003
60 (60.1–End)	(869–050–00141–1)	58.00	July 1, 2003
60 (Apps)	(869–050–00142–0)	51.00	[8] July 1, 2003
61–62	(869–050–00143–8)	43.00	July 1, 2003
63 (63.1–63.599)	(869–050–00144–6)	58.00	July 1, 2003
63 (63.600–63.1199)	(869–050–00145–4)	50.00	July 1, 2003
63 (63.1200–63.1439)	(869–050–00146–2)	50.00	July 1, 2003
63 (63.1440–End)	(869–050–00147–1)	64.00	July 1, 2003
64–71	(869–050–00148–9)	29.00	July 1, 2003
72–80	(869–050–00149–7)	61.00	July 1, 2003
81–85	(869–050–00150–1)	50.00	July 1, 2003
86 (86.1–86.599–99)	(869–050–00151–9)	57.00	July 1, 2003
86 (86.600–1–End)	(869–050–00152–7)	50.00	July 1, 2003
87–99	(869–050–00153–5)	60.00	July 1, 2003
100–135	(869–050–00154–3)	43.00	July 1, 2003
136–149	(869–150–00155–1)	61.00	July 1, 2003
150–189	(869–050–00156–0)	49.00	July 1, 2003
190–259	(869–050–00157–8)	39.00	July 1, 2003
260–265	(869–050–00158–6)	50.00	July 1, 2003
266–299	(869–048–00156–5)	47.00	July 1, 2002
300–399	(869–050–00160–8)	42.00	July 1, 2003
400–424	(869–050–00161–6)	56.00	July 1, 2003
425–699	(869–050–00162–4)	61.00	July 1, 2003
700–789	(869–050–00163–2)	61.00	July 1, 2003
790–End	(869–050–00164–1)	58.00	July 1, 2003
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–050–00165–9)	23.00	[7] July 1, 2003
101	(869–050–00166–7)	24.00	July 1, 2003
102–200	(869–050–00167–5)	50.00	July 1, 2003
201–End	(869–050–00168–3)	22.00	July 1, 2003
42 Parts:			
1–399	(869–048–00166–2)	56.00	Oct. 1, 2002
400–429	(869–050–00170–5)	62.00	Oct. 1, 2003
430–End	(869–050–00171–3)	64.00	Oct. 1, 2003
43 Parts:			
1–999	(869–050–00172–1)	55.00	Oct. 1, 2003
1000–end	(869–048–00170–1)	59.00	Oct. 1, 2002
44	(869–050–00174–8)	50.00	Oct. 1, 2003
45 Parts:			
1–199	(869–050–00175–6)	60.00	Oct. 1, 2003
200–499	(869–050–00176–4)	33.00	[9] Oct. 1, 2003
500–1199	(869–050–00177–2)	50.00	Oct. 1, 2003
1200–End	(869–050–00178–1)	60.00	Oct. 1, 2003
46 Parts:			
1–40	(869–050–00179–9)	46.00	Oct. 1, 2003
41–69	(869–050–00180–2)	39.00	Oct. 1, 2003
70–89	(869–050–00181–1)	14.00	Oct. 1, 2003
90–139	(869–050–00182–9)	44.00	Oct. 1, 2003
140–155	(869–050–00183–7)	25.00	[9] Oct. 1, 2003
156–165	(869–050–00184–5)	34.00	[9] Oct. 1, 2003
166–199	(869–050–00185–3)	46.00	Oct. 1, 2003
200–499	(869–050–00186–1)	39.00	Oct. 1, 2003
500–End	(869–050–00187–0)	25.00	Oct. 1, 2003
47 Parts:			
0–19	(869–050–00188–8)	61.00	Oct. 1, 2003
20–39	(869–048–00186–7)	45.00	Oct. 1, 2002
40–69	(869–050–00190–0)	39.00	Oct. 1, 2003
70–79	(869–048–00188–3)	58.00	Oct. 1, 2002
*80–End	(869–050–00192–6)	61.00	Oct. 1, 2003
48 Chapters:			
1 (Parts 1–51)	(869–050–00193–4)	63.00	Oct. 1, 2003
1 (Parts 52–99)	(869–050–00194–2)	50.00	Oct. 1, 2003
2 (Parts 201–299)	(869–050–00195–1)	55.00	Oct. 1, 2003
3–6	(869–050–00196–9)	33.00	Oct. 1, 2003
7–14	(869–050–00197–7)	61.00	Oct. 1, 2003
15–28	(869–048–00195–6)	55.00	Oct. 1, 2002
29–End	(869–050–00199–3)	38.00	[9] Oct. 1, 2003
49 Parts:			
1–99	(869–050–00200–1)	60.00	Oct. 1, 2003
100–185	(869–050–00201–9)	63.00	Oct. 1, 2003
186–199	(869–050–00202–7)	20.00	Oct. 1, 2003

Title	Stock Number	Price	Revision Date
200–399	(869–050–00203–5)	64.00	Oct. 1, 2003
400–599	(869–050–00204–3)	63.00	Oct. 1, 2003
600–999	(869–050–00205–1)	22.00	Oct. 1, 2003
1000–1199	(869–050–00206–0)	26.00	Oct. 1, 2003
1200–End	(869–048–00207–8)	33.00	Oct. 1, 2003
50 Parts:			
1–16	(869–050–00208–6)	11.00	Oct. 1, 2003
18–199	(869–050–00212–4)	42.00	Oct. 1, 2003
200–599	(869–050–00213–2)	44.00	Oct. 1, 2003
600–End	(869–050–00214–1)	61.00	Oct. 1, 2003
CFR Index and Findings Aids	(869–050–00048–2)	59.00	Jan. 1, 2003
Complete 2003 CFR set		1,195.00	2003
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2003
Individual copies		2.00	2003
Complete set (one-time mailing)		298.00	2002
Complete set (one-time mailing)		290.00	2001

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2003. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2003. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2003. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2003. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2003. The CFR volume issued as of October 1, 2001 should be retained.