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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Closure of Two MSPB Offices

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or Board) is amending its rules of practice and procedure in this part to reflect the planned closure of its Boston Field Office and Seattle Field Office.

Effective March 17, 2004, no new appeals may be filed in the Boston Field Office and Seattle Field Office. On March 17, 2004, areas currently served by the Boston Field Office will be transferred to the Northeastern Regional Office (Philadelphia, Pennsylvania) and areas served by the Seattle Field Office will be transferred to the Western Regional Office (San Francisco, California).

Cases filed in the Boston Field Office and Seattle Field Office prior to March 17, 2004, will remain docketed in those offices and parties should continue filing pleadings with those offices until a notice transferring the case is issued. The Board anticipates closing the Boston Field Office and Seattle Field Office on March 31, 2004.

Accordingly, Appendix II of this part is amended to delete the Boston and Seattle Field Offices effective March 17, 2004. This amendment reassigns the areas served by the Boston Field Office to the Northeastern Regional Office and reassigns the areas served by the Seattle Field Office to the Western Regional Office. Appendix III of this part is amended effective March 17, 2004, to delete the approved hearing locations currently listed under the Boston and Seattle Field Offices and transfer those approved hearing locations to the Northeastern Regional Office and the Western Regional Office, respectively.

In addition, the Board has included an amendment to the zip code listed for the Denver Field Office in Appendix II and several amendments to the list of approved hearing sites in Appendix III.

DATES: Effective March 17, 2004.

FOR FURTHER INFORMATION CONTACT: Timothy L. Korb, Manager, Information Services, Merit Systems Protection Board, 1615 M Street, NW, Washington, DC, 20419; (202) 653–7200; fax: (202) 653–7130; or e-mail: *mspb@mspb.gov.*

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

■ Accordingly, the Board amends 5 CFR part 1201 as follows:

■ 1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701, unless otherwise noted.

■ 2. Appendix II to Part 1201 is revised to read as follows:

Appendix II to Part 1201—Appropriate Regional or Field Office for Filing Appeals

All submissions shall be addressed to the Regional Director, if submitted to a regional office, or the Chief Administrative Judge, if submitted to a field office, Merit Systems Protection Board, at the addresses listed below, according to geographic region of the employing agency or as required by § 1201.4(d) of this part. The facsimile numbers listed below are TDD-capable; however, calls will be answered by voice before being connected to the TDD. Address of Appropriate Regional or Field Office and Area Served:

1. Atlanta Regional Office, 401 West Peachtree Street, NW., 10th floor, Atlanta, Georgia 30308–3519, Facsimile No.: (404) 730–2767, (Alabama; Florida; Georgia; Mississippi; South Carolina; and Tennessee).

2. Central Regional Office, 230 South Dearborn Street, 31st floor, Chicago, Illinois 60604–1669, Facsimile No.: (312) 886–4231, (Illinois; Indiana; Iowa; Kansas City, Kansas; Kentucky; Michigan; Minnesota; Missouri; Ohio; and Wisconsin).

2a. Dallas Field Office, 1100 Commerce Street, Room 620, Dallas, Texas 75242–9979, Facsimile No.: (214) 767–0102, (Arkansas; Louisiana; Oklahoma; and Texas).

3. Northeastern Regional Office, U.S. Customhouse, Room 501, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106–2987, Facsimile No.: (215) 597–3456, (Connecticut; Delaware; Maine; Maryland—except the counties of Montgomery and Prince George's; Massachusetts; New Hampshire; New Jersey—except the counties of Bergen, Essex, Hudson, and Union; Pennsylvania; Rhode Island; Vermont; and West Virginia).

3a. New York Field Office, 26 Federal Plaza, Room 3137–A, New York, New York 10278–0022, Facsimile No.: (212) 264–1417, (New Jersey—counties of Bergen, Essex, Hudson, and Union; New York; Puerto Rico; and Virgin Islands).

4. Washington Regional Office, 1800 Diagonal Road, Alexandria, Virginia 22314, Facsimile No.: (703) 756–7112, (Maryland—counties of Montgomery and Prince George's; North Carolina; Virginia; Washington, DC; and all overseas areas not otherwise covered).

5. Western Regional Office, 250 Montgomery Street, Suite 400, 4th floor, San Francisco, California 94104–3401, Facsimile No.: (415) 705–2945, (Alaska; California; Hawaii; Idaho; Nevada; Oregon; Washington; and Pacific overseas areas).

5a. Denver Field Office, 165 South Union Blvd., Suite 318, Lakewood, Colorado 80228–2211, Facsimile No.: (303) 969–5109, (Arizona; Colorado; Kansas—except Kansas City; Montana; Nebraska; New Mexico; North Dakota; South Dakota; Utah; and Wyoming).

■ 3. Appendix III to Part 1201 is revised to read as follows:

Appendix III to Part 1201—Approved Hearing Locations By Regional Office

Atlanta Regional Office

Birmingham, Alabama
Huntsville, Alabama
Mobile, Alabama
Montgomery, Alabama
Jacksonville, Florida
Miami, Florida
Orlando, Florida
Pensacola, Florida
Tallahassee, Florida
Tampa/St. Petersburg, Florida
Atlanta, Georgia
Augusta, Georgia
Macon, Georgia
Savannah, Georgia
Jackson, Mississippi
Charleston, South Carolina
Columbia, South Carolina
Chattanooga, Tennessee
Knoxville, Tennessee
Memphis, Tennessee
Nashville, Tennessee

Central Regional Office

Chicago, Illinois
Indianapolis, Indiana
Davenport, Iowa/Rock Island, Illinois
Des Moines, Iowa
Lexington, Kentucky
Louisville, Kentucky
Detroit, Michigan

Minneapolis/St. Paul, Minnesota
Kansas City, Missouri
Springfield, Missouri
St. Louis, Missouri
Cleveland, Ohio
Cincinnati, Ohio
Columbus, Ohio
Dayton, Ohio
Milwaukee, Wisconsin

Dallas Field Office

Little Rock, Arkansas
Alexandria, Louisiana
New Orleans, Louisiana
Oklahoma City, Oklahoma
Tulsa, Oklahoma
Corpus Christi, Texas
Dallas, Texas
El Paso, Texas
Houston, Texas
San Antonio, Texas
Temple, Texas
Texarkana, Texas

Northeastern Regional Office

Hartford, Connecticut
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Boise, Idaho
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Richland, Kennewick, and Pasco, Washington

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Albuquerque, New Mexico
Bismarck, North Dakota
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Rapid City, South Dakota
Sioux Falls, South Dakota
Salt Lake City, Utah
Casper, Wyoming

Dated: March 5, 2004.

Bentley M. Roberts, Jr.,

Clerk of the Board.

[FR Doc. 04–5417 Filed 3–10–04; 8:45 am]

BILLING CODE 7400–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–362–AD; Amendment 39–13515; AD 2004–05–20]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas transport category airplanes, that requires modification of the installation wiring for the electric motor operated auxiliary hydraulic pumps in the right wheel well area of the main landing gear, and repetitive inspections of the numbers 1 and 2 electric motors of the auxiliary hydraulic pumps for electrical resistance, continuity, mechanical rotation, and associated airplane wiring resistance/voltage; and corrective actions if necessary. This action is necessary to prevent failure of the electric motors of the hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure. This action is intended to address the identified unsafe condition.

DATES: Effective April 15, 2004.

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

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

FOR FURTHER INFORMATION CONTACT: Ken Sujishi, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5353; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes, was published in the **Federal Register** on October 15, 2003 (68 FR 59349). That action proposed to require modification of the installation wiring for the electric motor operated auxiliary hydraulic pumps in the right wheel well area of the main landing gear, and repetitive inspections of the numbers 1 and 2 electric motors of the auxiliary hydraulic pumps for electrical resistance, continuity, mechanical rotation, and associated airplane wiring resistance/voltage; and corrective actions if necessary.

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.

Requests To Extend Repetitive Inspection Interval

Two commenters state that they support the intent of the proposed rule, but they request that the proposed repetitive inspection interval of 2,500 flight hours be extended to every 18 months or 6,000 flight hours. One commenter states that it has been inspecting the affected pump installations every 18 months or 6,000 flight hours and that none of the affected airplanes or pumps removed from the affected airplanes exhibit signs of arcing, burnt wiring, or other conditions indicative of a fire.

The FAA does not agree that the repetitive interval should be extended. In the ''Discussion'' section of the preamble of the proposed AD we advised that investigation revealed that the unsafe condition had occurred on airplanes that had been in service several years and/or had the auxiliary hydraulic pump previously overhauled. In addition, two reports of short circuit failure of the motor electrical connector of the auxiliary hydraulic pump occurred even though the affected airplanes were being inspected at intervals of 18 months or 6,000 flight hours. Therefore, we have determined that an inspection interval of 2,500 flight hours will provide an adequate interval to detect and correct the identified unsafe condition.

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 as proposed.

Cost Impact

There are approximately 409 Model DC–10 airplanes of the affected design in the worldwide fleet. The FAA estimates that 322 airplanes of U.S. registry will be affected by this AD.

It will take approximately 9 work hours per airplane to do the modification specified in Boeing Alert Service Bulletin DC10–29A144, at an average labor rate of $65 per work hour. Required parts will cost would be between $4,886 and $7,920 per airplane. Based on these figures, the cost impact of the modification is estimated to be between $5,471 and $8,505 per airplane.

It will take approximately 1 work hour per airplane to do the inspection specified in Boeing Alert Service Bulletin DC10–29A142, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the inspection is estimated to be $65 per airplane, per inspection cycle.

There are approximately 195 Model MD–11 airplanes of the affected design in the worldwide fleet. The FAA estimates that 74 airplanes of U.S. registry will be affected by this AD.

It will take approximately 13 work hours per airplane to do the modification specified in Boeing Alert Service Bulletin MD11–29A059, at an average labor rate of $65 per work hour. Required parts will cost between $5,183 and $9,182 per airplane. Based on these figures, the cost impact of the modification is estimated to be between $6,028 and $10,027 per airplane.

It will take approximately 1 work hour per airplane to do the inspection specified in Boeing Alert Service Bulletin MD11–29A057, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the inspection is estimated to be $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:

2004–05–20 McDonnell Douglas: Amendment 39–13515. Docket 2001–NM–362–AD.

Applicability: Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the electric motors of the hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure, accomplish the following:

Modification/Prior or Concurrent Actions

(a) For airplanes listed in Boeing Alert Service Bulletin DC10–29A144, Revision 2, dated August 1, 2003: Within 18 months after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify the installation wiring of the electric motor operated auxiliary hydraulic pumps in the right wheel well area of the main landing gear (MLG) (including removing existing clamps, ground wires, if required, and sleeving from the wire assemblies; inspecting for cracks and chafing, installing new support bracket, clips, and bracket assemblies, as applicable; installing sleeving; re-routing and attaching wire assemblies using new clamps and attachments; installing an additional routing clip on lower bracket of fuel motor control valve, if applicable; and doing a voltage check and a functional test), per the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–29A144, Revision 2, dated August 1, 2003.

(2) Prior to or concurrent with accomplishment of paragraph (a)(1) of this AD: Do the actions specified in Boeing Alert Service Bulletin DC10–29A142, Revision 02, dated April 17, 2003 (including inspecting the numbers 1 and 2 electric motors of the auxiliary hydraulic pumps for electrical resistance, continuity, mechanical rotation,

and associated airplane wiring resistance/voltage; and replacing the auxiliary hydraulic pump with a serviceable pump and repairing the wiring if necessary), per the Accomplishment Instructions of the service bulletin. Repeat the actions after that at intervals not to exceed 2,500 flight hours.

(b) For airplanes listed in Boeing Alert Service Bulletin MD11–29A059, Revision 2, dated August 1, 2003: Within 18 months after the effective date of this AD, do the actions specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) Modify the installation wiring of the electric motor auxiliary hydraulic pumps in the wheel well area of the right MLG (including removing and retaining wire assembly clamps, if applicable; retaining the existing ground wire assemblies; retaining or replacing all other wire assemblies for both connectors; installing spiral wrap and sleeving; wrapping upper ends of individual wires with tape; installing new support bracket assemblies, if applicable; re-routing and attaching wire assemblies using new clamps and attachments, if applicable; and doing a voltage check and a functional test), per the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–29A059, Revision 2, dated August 1, 2003.

(2) Prior to or concurrent with accomplishment of paragraph (b)(1) of this AD: Do the actions specified in Boeing Alert Service Bulletin MD11–29A057, Revision 02, dated April 17, 2003 (including inspecting the numbers 1 and 2 electric motors of the auxiliary hydraulic pumps for electrical resistance, continuity, mechanical rotation, and associated airplane wiring resistance/voltage; and replacing the auxiliary hydraulic pump with a serviceable pump and repairing the wiring if necessary), per the Accomplishment Instructions of the service bulletin. Repeat the actions after that at intervals not to exceed 2,500 flight hours.

Alternative Methods of Compliance

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

Incorporation by Reference

(d) The actions shall be done in accordance with the applicable service bulletins listed in the following table:

TABLE 1.—APPLICABLE SERVICE BULLETINS

Service bulletin	Revision level	Date
Boeing Alert Service Bulletin DC10–29A142	Revision 02	April 17, 2003.
Boeing Alert Service Bulletin DC10–29A144	Revision 2	August 1, 2003.
Boeing Alert Service Bulletin MD11–29A057	Revision 02	April 17, 2003.
Boeing Alert Service Bulletin MD11–29A059 including Appendix	Revision 2	August 1, 2003.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on April 15, 2004.

Issued in Renton, Washington, on February 26, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–4937 Filed 3–10–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Lincomycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The ANADA provides for the use of lincomycin injectable solution in swine for the treatment of infectious arthritis and mycoplasma pneumonia.

DATES: This rule is effective March 11, 2004.

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

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th St. Terrace, St. Joseph, MO 64503, filed ANADA 200–351 that provides for use of Lincomycin (lincomycin hydrochloride monohydrate) Injectable, USP in swine for the treatment of infectious arthritis and mycoplasma pneumonia. Phoenix Scientific's Lincomycin Injectable is approved as a generic copy of Pharmacia & Upjohn Co.'s LINCOMIX Injectable, approved under NADA 034–025. The ANADA is approved as of February 13, 2004, and the regulations are amended in 21 CFR 522.1260 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

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

§ 522.1260 [Amended]

■ 2. Section 522.1260 *Lincomycin* is amended in paragraph (b)(2) by removing ''No. 000857'' and by adding in its place ''Nos. 000857 and 059130''.

Dated: March 3, 2004.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 04–5488 Filed 3–10–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9116]

RIN 1545–BC02

New Markets Tax Credit Amendments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains amendments to temporary regulations for the new markets tax credit under section 45D. The regulations revise and clarify certain aspects of those regulations and affect a taxpayer making a qualified equity investment in a qualified community development entity that has received a new markets tax credit allocation. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective March 11, 2004.

Applicability Date: For date of applicability, see § 1.45D–1T(h).

FOR FURTHER INFORMATION CONTACT: Paul F. Handleman or Lauren R. Taylor, (202) 622–3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR part 1 to provide amended rules (the revised regulations) relating to the new markets tax credit under section 45D of the Internal Revenue Code (Code). On December 26, 2001, the IRS published temporary and proposed regulations (the 2001 temporary regulations) in the **Federal Register** (66 FR 66307, 66 FR 66376). Written and electronic comments responding to the 2001 temporary regulations were received. The IRS and Treasury Department have reviewed the comments on the 2001 temporary regulations and decided to revise and clarify certain aspects of those regulations. The IRS and Treasury Department continue to consider comments on the 2001 temporary regulations that are not addressed in the revised regulations.

Explanation of Provisions

General Overview

Taxpayers may claim a new markets tax credit on a credit allowance date in an amount equal to the applicable percentage of the taxpayer's qualified equity investment in a qualified community development entity (CDE). The credit allowance date for any qualified equity investment is the date on which the investment is initially made and each of the 6 anniversary dates thereafter. The applicable percentage is 5 percent for the first 3 credit allowance dates and 6 percent for the remaining credit allowance dates.

A CDE is any domestic corporation or partnership if: (1) The primary mission of the entity is serving or providing investment capital for low-income communities or low-income persons; (2) the entity maintains accountability to residents of low-income communities through their representation on any governing board of the entity or on any advisory board to the entity; and (3) the entity is certified by the Secretary for purposes of section 45D as being a CDE.

The new markets tax credit may be claimed only for a qualified equity investment in a CDE. A qualified equity investment is any equity investment in a CDE for which the CDE has received an allocation from the Secretary if, among other things, the CDE uses substantially all of the cash from the investment to make qualified low-income community investments. Under a safe harbor, the substantially-all requirement is treated as met if at least 85 percent of the aggregate gross assets of the CDE are invested in qualified low-income community investments.

Qualified low-income community investments consist of: (1) Any capital or equity investment in, or loan to, any qualified active low-income community business; (2) the purchase from another CDE of any loan made by such entity that is a qualified low-income community investment; (3) financial counseling and other services to businesses located in, and residents of, low-income communities; and (4) certain equity investments in, or loans to, a CDE.

In general, a qualified active low-income community business is a corporation or a partnership if for the taxable year: (1) At least 50 percent of the total gross income of the entity is derived from the active conduct of a qualified business within any low-income community; (2) a substantial portion of the use of the tangible property of the entity is within any low-income community; (3) a substantial portion of the services performed for the entity by its employees is performed in any low-income community; (4) less than 5 percent of the average of the aggregate unadjusted bases of the property of the entity is attributable to certain collectibles; and (5) less than 5 percent of the average of the aggregate unadjusted bases of the property of the entity is attributable to certain nonqualified financial property.

Substantially All

As indicated above, a CDE must use substantially all of the cash from a qualified equity investment to make qualified low-income community investments. Section 1.45D–1T(c)(5)(i) provides that the substantially-all requirement is treated as satisfied for an annual period if either the direct-tracing calculation under § 1.45D–1T(c)(5)(ii), or the safe harbor calculation under § 1.45D–1T(c)(5)(iii), is performed every six months and the average of the two calculations for the annual period is at least 85 percent. Commentators have suggested that the use of the direct-tracing calculation (or the safe harbor calculation) for an annual period should not preclude the use of the safe harbor calculation (or the direct-tracing calculation) for another annual period. The revised regulations adopt this suggestion.

Commentators have suggested that, if a CDE makes a qualified low-income community investment from a source of funds other than a qualified equity investment (for example, a line of credit from a bank), and later uses proceeds of an equity investment in the CDE to reimburse or repay the other source of funds, the equity investment should be treated as financing the qualified low-income community investment on a direct-tracing basis. The revised regulations do not adopt this suggestion because, in these circumstances, the proceeds of the equity investment are not ''used . . . to make'' the qualified low-income community investment as required by section 45D(b)(1)(B). However, the revised regulations provide an example demonstrating that, in this situation, the substantially-all requirement may be satisfied under the safe harbor calculation.

Qualified Low-Income Community Investments

Under section 45D(d)(1)(B), a qualified low-income community

investment includes the purchase from another CDE of any loan made by such entity that is a qualified low-income community investment. Commentators have suggested that, for purposes of section 45D(d)(1)(B), a loan by an entity should be treated as made by a CDE, even if the entity is not a CDE at the time it makes the loan, so long as the entity is a CDE at the time it sells the loan. The revised regulations adopt this suggestion, in accordance with Notice 2003–68 (2003–41 I.R.B. 824).

Commentators also have suggested that the phrase ''made by such entity'' for purposes of section 45D(d)(1)(B) should include any loans held or purchased by such entity. The revised regulations do not adopt this suggestion because it would treat loan purchases as qualified low-income community investments even if the originator or a prior seller of the loan were not a CDE. However, the revised regulations do contain a special rule, as set forth in Notice 2003–68, that applies to the purchase of a loan by a CDE (the ultimate CDE) from a second CDE if the loan was made by a third CDE (the originating CDE). Specifically, the revised regulations provide that, for purposes of section 45D(d)(1)(B): (1) The purchase of a loan by the ultimate CDE from a second CDE that purchased the loan from the originating CDE (or from another CDE) is treated as a purchase of the loan by the ultimate CDE from the originating CDE, provided that each entity that sold the loan was a CDE at the time it sold the loan; and (2) a loan purchased by the ultimate CDE from another CDE is a qualified low-income community investment if it qualifies as a qualified low-income community investment either (A) at the time the loan was made or (B) at the time the ultimate CDE purchases the loan.

Commentators have suggested that, in certain circumstances in which a CDE purchases a loan from another entity under an advance commitment agreement, the loan should be treated as made by the CDE and therefore eligible to be a qualified low-income community investment. The revised regulations provide that, for these purposes, a loan is treated as made by a CDE to the extent the CDE purchases the loan from the originator (whether or not the originator is a CDE) within 30 days after the date the originator makes the loan if, at the time the loan is made, there is a legally enforceable written agreement between the originator and the CDE which (A) requires the CDE to approve the making of the loan either directly or by imposing specific written loan underwriting criteria and (B) requires the CDE to purchase the loan within 30 days after the date the loan is made.

Section 1.45D–1T(d)(1)(iv) provides that a qualified low-income community investment includes an equity investment in, or loan to, another CDE, but only to the extent that the recipient CDE uses the proceeds: (1) for either an investment in, or a loan to, a qualified active low-income community business, or financial counseling and other services; and (2) in a manner that would constitute a qualified low-income community investment if it were made directly by the CDE making the equity investment or loan. Commentators have suggested that this provision should be amended to permit investments through multiple tiers of CDEs. For example, commentators have indicated that some CDEs have reasons relating to bank regulatory requirements for lending to bank holding company CDEs that invest in bank subsidiary CDEs. The revised regulations amend this provision, in accordance with Notice 2003–64 (2003–39 I.R.B. 646), to permit investments through two additional CDEs.

Qualified Active Low-Income Community Business

Section 45D(d)(2)(A)(i) provides that a corporation (including a nonprofit corporation) or a partnership is a qualified active low-income community business only if, among other things, at least 50 percent of the total gross income of the entity is derived from the active conduct of a qualified business within any low-income community. Commentators have requested clarification of the meaning of ''active conduct''. Some commentators have suggested that the term should include start-up businesses, including the development of commercial rental property. Other commentators have suggested defining active conduct by focusing on the economic effect of a particular business activity. The revised regulations provide a special rule that makes clear that an entity will be treated as engaged in the active conduct of a trade or business if, at the time the CDE makes a capital or equity investment in, or loan to, the entity, the CDE reasonably expects that the entity will generate revenues (or, in the case of a nonprofit corporation, receive donations) within 3 years after the date the investment or loan is made.

Section 45D(d)(2)(A)(iii) provides that a corporation or a partnership is a qualified active low-income community business only if, among other things, a substantial portion of the services performed for such entity by its employees are performed in a low-income community (the services test). Section 1.45D–1T(d)(4)(i)(C) defines substantial portion for this purpose as 40 percent. Commentators have requested guidance on compliance with the services test if an entity has no employees. One commentator has suggested that, if the entity is a partnership and has no employees, the test should be applied to the general partners or managing members. The revised regulations provide that, if an entity has no employees, the entity is deemed to satisfy the services test (as well as the requirement in § 1.45D–1T(d)(4)(i)(A) that at least 50 percent of the total gross income of the entity be derived from the active conduct of a qualified business within a low-income community) if at least 85 percent of the use of the tangible property of the entity (whether owned or leased) is within a low-income community.

Control

Under § 1.45D–1T(d)(6)(i), an entity is treated as a qualified active low-income community business if the CDE reasonably expects, at the time the CDE makes the capital or equity investment in, or loan to, the entity, that the entity will satisfy the requirements to be a qualified active low-income community business throughout the entire period of the investment or loan. However, under § 1.45D–1T(d)(6)(ii)(A), if the CDE controls or obtains control of the entity at any time during the 7-year credit period, the entity will be treated as a qualified active low-income community business only if the entity satisfies the applicable requirements throughout the entire period the CDE controls the entity. Section 1.45D–1T(d)(6)(ii)(B) generally defines control with respect to an entity as direct or indirect ownership (based on value) or control (based on voting or management rights) of 33 percent or more of the entity. Commentators have suggested that this definition should be revised to increase the threshold for control. The revised regulations amend the definition of control to mean direct or indirect ownership (based on value) or control (based on voting or management rights) of more than 50 percent of the entity.

Commentators have suggested that if a CDE obtains control of an entity subsequent to making an investment in the entity, the CDE should be granted a reasonable period (such as 12 months) either to cause the entity to satisfy the requirements to be a qualified active low-income community business or to find a replacement investment. The revised regulations provide a 12-month period during which a CDE's acquisition of control of an entity is disregarded if, among other things, the CDE's

investment in the entity met the reasonable expectations test of § 1.45D–1T(d)(6)(i) when initially made and the acquisition of control is due to unforeseen financial difficulties of the entity.

Other Issues

Commentators have suggested that taxpayers should be able to claim the new markets tax credit in the event the CDE in which the qualified equity investment is made becomes bankrupt. The revised regulations adopt this suggestion.

The revised regulations incorporate Notice 2003–9 (2003–5 I.R.B. 369), which permits certain equity investments made on or after April 20, 2001, to be designated as qualified equity investments, and Notice 2003–56 (2003–34 I.R.B. 396), which permits certain equity investments made on or after the date the Treasury Department publishes a Notice of Allocation Availability to be designated as qualified equity investments. The revised regulations also incorporate Notice 2002–64 (2002–41 I.R.B. 690), which provides guidance on Federal tax benefits that do not limit the availability of the new markets tax credit. The IRS and Treasury Department continue to study how the low-income housing credit under section 42 may limit the availability of the new markets tax credit.

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 applicability of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these amendments to the 2001 temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Paul F. Handleman, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. 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 1.45D–1T is amended by:

■ 1. Revising the section heading.

■ 2. Amending paragraph (a) by:

(a) Amending the entry for (c)(3)(ii) by removing the word ''Exception'' and by adding the word ''Exceptions'' in its place.

(b) Adding new entries for (c)(3)(ii)(A) and (B).

(c) Redesignating the entry for (c)(3)(iii) as (c)(3)(iv).

(d) Adding a new entry for (c)(3)(iii).

(e) Adding a new entry for (c)(5)(vi).

(f) Adding new entries for (d)(1)(ii)(A), (d)(1)(ii)(B), (d)(1)(ii)(C), and (d)(1)(ii)(D).

(g) Adding new entries for (d)(1)(iv)(A) and (d)(1)(iv)(B).

(h) Adding new entries for (d)(4)(iv), (d)(4)(iv)(A), and (d)(4)(iv)(B).

(i) Adding a new entry for (d)(6)(ii)(C).

(j) Adding new entries for (d)(8), (d)(8)(i), and (d)(8)(ii).

(k) Adding new entries for (g)(3), (g)(3)(i), (g)(3)(ii), and (g)(4)

(l) Amending the entry for (h) by removing the word ''Date'' and by adding the word ''Dates'' in its place.

(m) Adding new entries for (h)(1) and (h)(2).

■ 3. Amending paragraph (c)(3)(ii) by removing the word ''Exception'' and by adding the word ''Exceptions'' in its place.

■ 4. Revising paragraphs (c)(3)(ii)(A) and (c)(3)(ii)(B).

■ 5. Removing paragraph (c)(3)(ii)(C) and (c)(3)(ii)(D).

■ 6. Redesignating paragraph (c)(3)(iii) as paragraph (c)(3)(iv).

■ 7. Adding a new paragraph (c)(3)(iii), a sentence after the third sentence in paragraph (c)(5)(i), a new paragraph (c)(5)(vi).

■ 8. Revising paragraphs (d)(1)(ii) and (iv).

■ 9. Adding a sentence at the end of paragraph (d)(4)(i)(A), a sentence at the end of paragraph (d)(4)(i)(C), a new paragraph (d)(4)(iv).

■ 10. Revising paragraph (d)(6)(ii)(B)

■ 11. Adding new paragraph (d)(6)(ii)(C), a new paragraph (d)(8), new paragraphs (g)(3) and (g)(4).

■ 12. Revising paragraph (h).

The additions and revisions read as follows:

§ 1.45D–1T New markets tax credit (temporary).

(a) * * *

* * * * *

(c) * * *

(3) * * *

(ii) Exceptions.

(A) Allocation applications submitted by August 29, 2002.

(B) Other allocation applications.

(iii) Failure to receive allocation.

(iv) Initial investment date.

* * * * *

(5) * * *

(vi) Examples.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(A) In general.

(B) Certain loans made before CDE certification.

(C) Intermediary CDEs.

(D) Examples.

* * * * *

(iv) * * *

(A) In general.

(B) Examples.

* * * * *

(4) * * *

(iv) Active conduct of a trade or business.

(A) Special rule.

(B) Example.

* * * * *

(6) * * *

* * * * *

(ii) * * *

* * * * *

(C) Disregard of control.

* * * * *

(8) Special rule for certain loans.

(i) In general.

(ii) Example.

* * * * *

(g) * * *

(3) Other Federal tax benefits.

(i) In general.

(ii) Low-income housing credit.

(4) Bankruptcy of CDE.

(h) Effective dates.

(1) In general.

(2) Exception for certain provisions.

* * * * *

(c) * * *

(3) * * *

(ii) *Exceptions.* * * *

(A) *Allocation applications submitted by August 29, 2002.*

(*1*) The equity investment is made on or after April 20, 2001;

(*2*) The designation of the equity investment as a qualified equity investment is made for a credit

allocation received pursuant to an allocation application submitted to the Secretary no later than August 29, 2002; and

(*3*) The equity investment otherwise satisfies the requirements of section 45D and this section; or

(B) *Other allocation applications.*

(*1*) The equity investment is made on or after the date the Secretary publishes a Notice of Allocation Availability (NOAA) in the **Federal Register**;

(*2*) The designation of the equity investment as a qualified equity investment is made for a credit allocation received pursuant to an allocation application submitted to the Secretary under that NOAA; and

(*3*) The equity investment otherwise satisfies the requirements of section 45D and this section.

(iii) *Failure to receive allocation.* For purposes of paragraph (c)(3)(ii)(A) of this section, if the entity in which the equity investment is made does not receive an allocation pursuant to an allocation application submitted no later than August 29, 2002, the equity investment will not be eligible to be designated as a qualified equity investment. For purposes of paragraph (c)(3)(ii)(B) of this section, if the entity in which the equity investment is made does not receive an allocation under the NOAA described in paragraph (c)(3)(ii)(B)(*1*) of this section, the equity investment will not be eligible to be designated as a qualified equity investment.

* * * * *

(5) * * *

(i) * * * The use of the direct-tracing calculation under paragraph (c)(5)(ii) of this section (or the safe harbor calculation under paragraph (c)(5)(iii) of this section) for an annual period does not preclude the use of the safe harbor calculation under paragraph (c)(5)(iii) of this section (or the direct-tracing calculation under paragraph (c)(5)(ii) of this section) for another annual period. * * *

* * * * *

(vi) *Examples.* The following examples illustrate an application of this paragraph (c)(5):

Example 1. X is a partnership and a CDE that has received a $1 million new markets tax credit allocation from the Secretary. On September 1, 2004, X uses a line of credit from a bank to fund a $1 million loan to Y. The loan is a qualified low-income community investment under paragraph (d)(1) of this section. On September 5, 2004, A pays $1 million to acquire a capital interest in X. X uses the proceeds of A's equity investment to pay off the $1 million line of credit that was used to fund the loan to Y. X's aggregate gross assets consist of the $1 million loan to Y and $100,000 in other assets. A's equity investment in X does not satisfy the substantially-all requirement under paragraph (c)(5)(i) of this section using the direct-tracing calculation under paragraph (c)(5)(ii) of this section because the cash from A's equity investment is not used to make X's loan to Y. However, A's equity investment in X satisfies the substantially-all requirement using the safe harbor calculation under paragraph (c)(5)(iii) of this section because at least 85 percent of X's aggregate gross assets are invested in qualified low-income community investments.

Example 2. X is a partnership and a CDE that has received a new markets tax credit allocation from the Secretary. On August 1, 2004, A pays $100,000 for a capital interest in X. On August 5, 2004, X uses the proceeds of A's equity investment to make an equity investment in Y. X controls Y within the meaning of paragraph (d)(6)(ii)(B) of this section. For the annual period ending July 31, 2005, Y is a qualified active low-income community business (as defined in paragraph (d)(4) of this section). Thus, for that period, A's equity investment satisfies the substantially-all requirement under paragraph (c)(5)(i) of this section using the direct-tracing calculation under paragraph (c)(5)(ii) of this section. For the annual period ending July 31, 2006, Y no longer is a qualified active low-income community business. Thus, for that period, A's equity investment does not satisfy the substantially-all requirement using the direct-tracing calculation. However, during the entire annual period ending July 31, 2006, X's remaining assets are invested in qualified low-income community investments with an aggregate cost basis of $900,000. Consequently, for the annual period ending July 31, 2006, at least 85 percent of X's aggregate gross assets are invested in qualified low-income community investments. Thus, for the annual period ending July 31, 2006, A's equity investment satisfies the substantially-all requirement using the safe harbor calculation under paragraph (c)(5)(iii) of this section.

Example 3. X is a partnership and a CDE that has received a new markets tax credit allocation from the Secretary. On August 1, 2004, A and B each pay $100,000 for a capital interest in X. X does not treat A's and B's equity investments as one qualified equity investment under paragraph (c)(6) of this section. On September 1, 2004, X uses the proceeds of A's equity investment to make an equity investment in Y and X uses the proceeds of B's equity investment to make an equity investment in Z. X has no assets other than its investments in Y and Z. X controls Y and Z within the meaning of paragraph (d)(6)(ii)(B) of this section. For the annual period ending July 31, 2005, Y and Z are qualified active low-income community businesses (as defined in paragraph (d)(4) of this section). Thus, for the annual period ending July 31, 2005, A's and B's equity investments satisfy the substantially-all requirement under paragraph (c)(5)(i) of this section using either the direct-tracing calculation under paragraph (c)(5)(ii) of this section or the safe harbor calculation under paragraph (c)(5)(iii) of this section. For the annual period ending July 31, 2006, Y, but not Z, is a qualified active low-income community business. Thus, for the annual period ending July 31, 2006: (1) X does not satisfy the substantially-all requirement using the safe harbor calculation under paragraph (c)(5)(iii) of this section; (2) A's equity investment satisfies the substantially-all requirement using the direct-tracing calculation because A's equity investment is directly traceable to Y; and (3) B's equity investment does not satisfy the substantially-all requirement because B's equity investment is traceable to Z.

* * * * *

(d) * * *

(1) * * *

(ii) *Purchase of certain loans from CDEs*—(A) *In general.* The purchase by a CDE (the ultimate CDE) from another CDE (whether or not that CDE has received an allocation from the Secretary under section 45D(f)(2)) of any loan made by such entity that is a qualified low-income community investment. A loan purchased by the ultimate CDE from another CDE is a qualified low-income community investment if it qualifies as a qualified low-income community investment either—

(*1*) At the time the loan was made; or

(*2*) At the time the ultimate CDE purchases the loan.

(B) *Certain loans made before CDE certification.* For purposes of paragraph (d)(1)(ii)(A) of this section, a loan by an entity is treated as made by a CDE, notwithstanding that the entity was not a CDE at the time it made the loan, if the entity is a CDE at the time it sells the loan.

(C) *Intermediary CDEs.* For purposes of paragraph (d)(1)(ii)(A) of this section, the purchase of a loan by the ultimate CDE from a CDE that did not make the loan (the second CDE) is treated as a purchase of the loan by the ultimate CDE from the CDE that made the loan (the originating CDE) if—

(*1*) The second CDE purchased the loan from the originating CDE (or from another CDE); and

(*2*) Each entity that sold the loan was a CDE at the time it sold the loan.

(D) *Examples.* The following examples illustrate an application of this paragraph (d)(1)(ii):

Example 1. X is a partnership and a CDE that has received a new markets tax credit allocation from the Secretary. Y, a corporation, made a $500,000 loan to Z in 1999. In January of 2004, Y is certified as a CDE. On September 1, 2004, X purchases the loan from Y. At the time X purchases the loan, Z is a qualified active low-income community business under paragraph (d)(4)(i) of this section. Accordingly, the loan purchased by X from Y is a qualified low-income community investment under

paragraphs (d)(1)(ii)(A) and (B) of this section.

Example 2. The facts are the same as in *Example 1* except that on February 1, 2004, Y sells the loan to W and on September 1, 2004, W sells the loan to X. W is a CDE. Under paragraph (d)(1)(ii)(C) of this section, X's purchase of the loan from W is treated as the purchase of the loan from Y. Accordingly, the loan purchased by X from W is a qualified low-income community investment under paragraphs (d)(1)(ii)(A) and (C) of this section.

Example 3. The facts are the same as in *Example 2* except that W is not a CDE. Because W was not a CDE at the time it sold the loan to X, the purchase of the loan by X from W is not a qualified low-income community investment under paragraphs (d)(1)(ii)(A) and (C) of this section.

* * * * *

(iv) *Investments in other CDEs*—(A) *In general.* Any equity investment in, or loan to, any CDE (the second CDE) by a CDE (the primary CDE), but only to the extent that the second CDE uses the proceeds of the investment or loan—

(*1*) In a manner—

(*i*) That is described in paragraph (d)(1)(i) or (iii) of this section; and

(*ii*) That would constitute a qualified low-income community investment if it were made directly by the primary CDE;

(*2*) To make an equity investment in, or loan to, a third CDE that uses such proceeds in a manner described in paragraph (d)(1)(iv)(A)(*1*) of this section; or

(*3*) To make an equity investment in, or loan to, a third CDE that uses such proceeds to make an equity investment in, or loan to, a fourth CDE that uses such proceeds in a manner described in paragraph (d)(1)(iv)(A)(*1*) of this section.

(B) *Examples.* The following examples illustrate an application of paragraph (d)(1)(iv)(A) of this section:

Example 1. X is a partnership and a CDE that has received a new markets tax credit allocation from the Secretary. On September 1, 2004, X uses $975,000 to make an equity investment in Y. Y is a corporation and a CDE. On October 1, 2004, Y uses $950,000 from X's equity investment to make a loan to Z. Z is a qualified active low-income community business under paragraph (d)(4)(i) of this section. Of X's equity investment in Y, $950,000 is a qualified low-income community investment under paragraph (d)(1)(iv)(A)(*1*) of this section.

Example 2. W is a partnership and a CDE that has received a new markets tax credit allocation from the Secretary. On September 1, 2004, W uses $975,000 to make an equity investment in X. On October 1, 2004, X uses $950,000 from W's equity investment to make an equity investment in Y. X and Y are corporations and CDEs. On October 5, 2004, Y uses $925,000 from X's equity investment to make a loan to Z. Z is a qualified active low-income community business under paragraph (d)(4)(i) of this section. Of W's equity investment in X, $925,000 is a qualified low-income community investment under paragraph (d)(1)(iv)(A)(*2*) of this section because X uses proceeds of W's equity investment to make an equity investment in Y, which uses $925,000 of the proceeds in a manner described in paragraph (d)(1)(iv)(A)(*1*) of this section.

Example 3. U is a partnership and a CDE that has received a new markets tax credit allocation from the Secretary. On September 1, 2004, U uses $975,000 to make an equity investment in V. On October 1, 2004, V uses $950,000 from U's equity investment to make an equity investment in W. On October 5, 2004, W uses $925,000 from V's equity investment to make an equity investment in X. On November 1, 2004, X uses $900,000 from W's equity investment to make an equity investment in Y. V, W, X, and Y are corporations and CDEs. On November 5, 2004, Y uses $875,000 from X's equity investment to make a loan to Z. Z is a qualified active low-income community business under paragraph (d)(4)(i) of this section. U's equity investment in V is not a qualified low-income community investment because X does not use proceeds of W's equity investment in a manner described in paragraph (d)(1)(iv)(A)(*1*) of this section.

* * * * *

(4) * * *

(i) * * *

(A) * * * See paragraph (d)(4)(iv) of this section for circumstances in which an entity will be treated as engaged in the active conduct of a trade or business.

* * * * *

(C) * * * If the entity has no employees, the entity is deemed to satisfy this paragraph (d)(4)(i)(C), and paragraph (d)(4)(i)(A) of this section, if the entity meets the requirement of paragraph (d)(4)(i)(B) of this section if ''85 percent'' is applied instead of 40 percent.

* * * * *

(iv) *Active conduct of a trade or business*—(A) *Special rule.* For purposes of paragraph (d)(4)(i)(A) of this section, an entity will be treated as engaged in the active conduct of a trade or business if, at the time the CDE makes a capital or equity investment in, or loan to, the entity, the CDE reasonably expects that the entity will generate revenues (or, in the case of a nonprofit corporation, receive donations) within 3 years after the date the investment or loan is made.

(B) *Example.* The application of paragraph (d)(4)(iv)(A) of this section is illustrated by the following example:

Example. X is a partnership and a CDE that receives a new markets tax credit allocation from the Secretary on July 1, 2004. X makes a ten-year loan to Y. Y is a newly formed entity that will own and operate a shopping center to be constructed in a low-income community. Y has no revenues but X reasonably expects that Y will generate revenues beginning in December 2005. Under paragraph (d)(4)(iv)(A) of this section, Y is treated as engaged in the active conduct of a trade or business for purposes of paragraph (d)(4)(i)(A) of this section.

* * * * *

(6) * * *

(ii) * * *

(B) *Definition of control.* Control means, with respect to an entity, direct or indirect ownership (based on value) or control (based on voting or management rights) of more than 50 percent of the entity.

(C) *Disregard of control.* For purposes of paragraph (d)(6)(ii)(A) of this section, the acquisition of control of an entity by a CDE is disregarded during the 12-month period following such acquisition of control (the 12-month period) if—

(*1*) The CDE's capital or equity investment in, or loan to, the entity met the requirements of paragraph (d)(6)(i) of this section when initially made;

(*2*) The CDE's acquisition of control of the entity is due to financial difficulties of the entity that were unforeseen at the time the investment or loan described in paragraph (d)(6)(ii)(C)(1) of this section was made; and

(*3*) If the acquisition of control occurs before the seventh year of the 7-year credit period (as defined in paragraph (c)(5)(i) of this section), either—

(*i*) The entity satisfies the requirements of paragraph (d)(4) of this section by the end of the 12-month period; or

(*ii*) The CDE sells or causes to be redeemed the entire amount of the investment or loan described in paragraph (d)(6)(ii)(C)(1) of this section and, by the end of the 12-month period, reinvests the amount received in respect of the sale or redemption in a qualified low-income community investment under paragraph (d)(1) of this section. For this purpose, the amount treated as continuously invested in a qualified low-income community investment is determined under paragraphs (d)(2)(i) and (ii) of this section.

* * * * *

(8) *Special rule for certain loans*—(i) *In general.* For purposes of paragraphs (d)(1)(i), (ii), and (iv) of this section, a loan is treated as made by a CDE to the extent the CDE purchases the loan from the originator (whether or not the originator is a CDE) within 30 days after the date the originator makes the loan if, at the time the loan is made, there is a legally enforceable written agreement between the originator and the CDE which—

(A) Requires the CDE to approve the making of the loan either directly or by

imposing specific written loan underwriting criteria; and

(B) Requires the CDE to purchase the loan within 30 days after the date the loan is made.

(ii) *Example.* The application of paragraph (d)(8)(i) of this section is illustrated by the following example:

Example. (i) X is a partnership and a CDE that has received a new markets tax credit allocation from the Secretary. On October 1, 2004, Y enters into a legally enforceable written agreement with W. Y and W are corporations but only Y is a CDE. The agreement between Y and W provides that Y will purchase loans (or portions thereof) from W within 30 days after the date the loan is made by W, and that Y will approve the making of the loans.

(ii) On November 1, 2004, W makes a $825,000 loan to Z pursuant to the agreement between Y and W. Z is a qualified active low-income community business under paragraph (d)(4) of this section. On November 15, 2004, Y purchases the loan from W for $840,000. On December 31, 2004, X purchases the loan from Y for $850,000.

(iii) Under paragraph (d)(8)(i) of this section, the loan to Z is treated as made by Y. Y's loan to Z is a qualified low-income community investment under paragraph (d)(1)(i) of this section. Accordingly, under paragraph (d)(1)(ii)(A) of this section, X's purchase of the loan from Y is a qualified low-income community investment in the amount of $850,000.

* * * * *

(g) * * *

(3) *Other Federal tax benefits*—(i) *In general.* Except as provided in paragraph (g)(3)(ii) of this section, the availability of Federal tax benefits does not limit the availability of the new markets tax credit. Federal tax benefits that do not limit the availability of the new markets tax credit include, for example:

(A) The rehabilitation credit under section 47;

(B) All depreciation deductions under sections 167 and 168, including the additional first-year depreciation under section 168(k), and the expense deduction for certain depreciable property under section 179; and

(C) All tax benefits relating to certain designated areas such as empowerment zones and enterprise communities under sections 1391 through 1397D, the District of Columbia Enterprise Zone under sections 1400 through 1400B, renewal communities under sections 1400E through 1400J, and the New York Liberty Zone under section 1400L.

(ii) *Low-income housing credit.* This paragraph (g)(3) does not apply to the low-income housing credit under section 42.

(4) *Bankruptcy of CDE.* The bankruptcy of a CDE does not preclude a taxpayer from continuing to claim the new markets tax credit on the remaining credit allowance dates under paragraph (b)(2) of this section.

(h) *Effective dates*—(1) *In general.* Except as provided in paragraph (h)(2) of this section, this section applies on or after December 26, 2001, and expires on December 23, 2004.

(2) *Exception for certain provisions.* Paragraphs (c)(3)(ii), (c)(3)(iii), (c)(5)(vi), (d)(1)(ii), (d)(1)(iv), (d)(4)(iv), (d)(6)(ii)(B), (d)(6)(ii)(C), (d)(8), (g)(3), and (g)(4) of this section, the fourth sentence in paragraph (c)(5)(i) of this section, the last sentence in paragraph (d)(4)(i)(A) of this section, and the last sentence in paragraph (d)(4)(i)(C) of this section apply on or after March 11, 2004, and may be applied by taxpayers before March 11, 2004. The paragraphs of this section that apply before March 11, 2004 are contained in § 1.45D–1T as in effect before March 11, 2004 (see 26 CFR part 1 revised as of April 1, 2003).

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: March 3, 2004.

Gregory F. Jenner,

Acting Assistant Secretary of the Treasury.

[FR Doc. 04–5560 Filed 3–10–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–051–FOR]

Maryland Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Maryland regulatory program (the ''Maryland program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment includes changes to the Code of Maryland Regulations (COMAR) to incorporate various revisions related to: augering, lands eligible for remining, required written findings, and topsoil handling.

EFFECTIVE DATE: March 11, 2004.

FOR FURTHER INFORMATION CONTACT: George Rieger, Telephone: 412–937–2153. Internet: *grieger@osmre.gov.*

SUPPLEMENTARY INFORMATION:

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

I. Background on the Maryland Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Maryland program on December 1, 1980. You can find background information on the Maryland program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 1, 1980, **Federal Register** (45 FR 79430). You can also find later actions concerning Maryland's program and program amendments at 30 CFR 920.12, 920.15 and 920.16.

II. Submission of the Proposed Amendment

By letter dated September 16, 2003, Maryland sent us a proposed amendment to its program (Administrative Record No. MD–585–00) under SMCRA (30 U.S.C. 1201 *et seq.*). Maryland sent the amendment to include changes made at its own initiative.

The provisions of COMAR that Maryland proposes to revise are as follows: COMAR, 26.20.03.07 Augering, A and B; 26.20.03.11 Lands Eligible for Remining, A, B, (1), (2), C, and D; 26.20.05.01 Required Written Findings, A, B, C, L, (1), (2), and (3), and 26.20.25.02 Topsoil Handling, D. The specific amendments to COMAR are identified below in the ''OSM Findings'' section.

We announced receipt of the proposed amendment in the October 27, 2003, **Federal Register** (68 FR 61172). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on

November 21, 2003. We received comments from one citizen, the U.S Environmental Protection Agency (EPA) and the Natural Resources Conservation Service (NRCS).

III. OSM's Findings

The following findings are made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes. The full text of the changes can be found below and in the October 27, 2003, **Federal Register** (68 FR 61172).

26.20.03.07 Augering

Maryland proposes to revise this section by recoding section A and adding section B to read as follows: ''No permit shall be issued for any augering operations unless the Bureau [Bureau of Mines] finds, in writing, that the operation meets all other requirements of this subtitle and will be conducted in compliance with COMAR 26.20.24.01.''

This revision was prompted by a recommendation included in OSM's Evaluation Year (EY) 2000 topical study entitled ''Maryland Permit Findings.'' Maryland's proposed revisions to COMAR make its regulatory program no less effective than 30 CFR 785.20(c) by requiring a written finding before augering operations may be conducted. Therefore, we are approving the amendment.

26.20.03.11 Lands Eligible for Remining

Maryland proposes to add this new section consisting of the following subsections:

A. This regulation applies to any person who conducts or intends to conduct a surface coal mining operation on lands eligible for remining.

B. Any application for a permit under this regulation shall be made according to all requirements of this subtitle applicable to surface coal mining and reclamation operations. In addition, the application shall—

(1) To the extent not otherwise addressed in the permit application, identify potential environmental and safety problems related to prior mining activities at the site that could be reasonably anticipated to occur; and

(2) With regard to potential environmental and safety problems referred to in section B (1) of this regulation, describe the mitigative measures that will be taken to ensure that the applicable reclamation requirements of the Regulatory Program can be met.

C. The identification of the environmental and safety problems required under section B (1) of this regulation shall include visual observations at the site, a record review of past mining at the site, and environmental sampling tailored to current site conditions.

D. The requirements of the regulation shall not apply after September 30, 2004.

This revision was prompted by a recommendation included in OSM's EY 2001 topical study entitled ''Maryland Remining.'' Maryland's proposed revision is substantively identical to the Federal requirements contained in 30 CFR 785.25. Therefore we are approving the amendment.

26.20.05.01 Required Written Findings

This section is being revised to delete ''A,'' ''may not,'' and ''that,'' and now reads: ''No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates and the Bureau finds, in writing, on the basis of information set forth in the application, or information otherwise available and documented in the approval under COMAR 26.20.04.11(A), the following''—

A. ''Complies'' is deleted and the subsection now reads: ''The permit application is complete and accurate and the applicant has complied with all requirements of the regulatory program'';

B. The words ''Surface coal mining and'' as well as ''mining and'' are deleted and the subsection is revised to read: ''The applicant has demonstrated that reclamation operations as required by the Regulatory Program can be feasibly accomplished under the reclamation plan contained in the application;''

C. The phrase ''has been made'' has been deleted and the subsection has been revised to read: ''The Bureau has made an assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact area on the hydrologic balance and has determined that the operations proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area;''

D.–K. (text unchanged)

L. The sentence, ''The activities are conducted so as to reasonably maximize the use of coal, while using the best appropriate technology currently available to maintain environmental integrity, so that the probability of re-affecting the land in the future by strip or underground mining operations is minimized'' is deleted and the Subsection has been revised to read: ''For permits issued under COMAR 26.20.03.11, the permit application must contain:

(1) Land eligible for remining;

(2) An identification of the potential environmental and safety problems related to the prior mining activities which could reasonably be anticipated to occur at the site; and

(3) Mitigation plans to sufficiently address these potential environmental safety problems so that reclamation as required by the applicable requirements of the Regulatory Program can be accomplished.''

These revisions were prompted by a recommendation included in OSM's EY 2001 topical study entitled ''Maryland Remining.'' In the past, Maryland's regulatory program did not include the specific requirements for permit written findings related to remining operations that are being added by this revision. Maryland's proposed revisions adopt language that is substantively identical to the Federal regulations at 30 CFR 773.15, 773.15(a), (b), (e), and (m). Therefore, we are approving the amendment.

Maryland proposes to revise section 26.20.25.02 (Topsoil Handling) as follows:

In subsection D, the word ''topsoil'', the phrase ''in the amounts determined by soil tests'', the phrase ''* * * surface soil layer so that it supports the approved post mining land use and meets the revegetation requirements,'' and the sentence ''All soil tests shall be performed by a qualified laboratory or person using standard methods approved by the Bureau'' have been deleted. The revised subsection D, entitled ''Nutrients and Soil Amendments,'' now reads ''Nutrients and soil amendments shall be applied to the initially redistributed material when necessary to establish the vegetative cover.''

Maryland's proposed revisions to this section are intended to eliminate the requirement to have soil tested by a qualified laboratory prior to redistributing the topsoil during the reclamation of the operation. There is no Federal counterpart to this deleted requirement. However, the revised subsection is identical to the Federal regulations at 30 CFR 816.22(d)(4). Therefore, we are approving the amendment.

IV. Summary and Disposition of Comments

Public Comments

We received a letter dated November 25, 2003, by a citizen (Administrative Record No. MD–585–06). The individual objected to Maryland revising COMAR 26.20.25.02 by deleting the requirement for topsoil testing. As discussed in the finding above, there is no Federal counterpart to this deleted provision. OSM cannot require a State to adopt or maintain regulatory requirements that are more stringent than the Federal regulations. However, as revised, the Maryland provision is identical to the Federal regulations at 30 CFR 816.22(d)(4), and is therefore approved.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Maryland program (Administrative Record No. MD–585–01). We received comments from the NRCS, which expressed concerns about the proposed deletion of soil testing being performed by a qualified laboratory. As discussed in the finding above, there is no Federal counterpart to this deleted provision. OSM cannot require a State to adopt or maintain regulatory requirements that are more stringent than the Federal regulations. However, as revised, the Maryland provision is identical to the Federal regulations at 30 CFR 816.22(d)(4), and is therefore approved.

NRCS also stated that, with respect to determinations of no material damage to the hydrologic balance outside the proposed permit area, it had concerns that changes were needed in the application of Hydrologic Soil Groups and development of runoff curve numbers to more accurately reflect hydrologic impacts outside the permit area. NRCS stated that these concerns were based on experiences from flood events over the last several years, coupled with results from recent studies by the Appalachian Environmental Lab in Frostburg, Maryland. In this vein, NRCS offered to provide ''on-site'' hydrologic soil group assessments for permit areas, until updated surveys are completed for Allegany and Garrett Counties in Maryland, to assist the State in making an assessment of the probable cumulative impacts to prevent material damage to the hydrologic balance outside the permit area. In response, and as noted above, we have found the State's regulation that requires a written finding with respect to material damage to the hydrologic balance outside the proposed permit area to be substantively identical to the counterpart Federal regulations. While the NRCS's concerns do not bear upon our decision to approve this amendment, we will forward these concerns to the State for consideration.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. MD–585–01).

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). This amendment does not contain provisions that relate to air or water quality standards and, therefore, concurrence by the EPA is not required. EPA, Region III, submitted a letter dated November 6, 2003, in which it indicated that there are no apparent inconsistencies between the amendment and the Clean Water Act or other statutes under the EPA's jurisdiction. (Administrative Record No. MD–585–04).

V. OSM's Decision

Based on the above findings, we are approving the amendment that Maryland forwarded to us on September 16, 2003.

To implement this decision, we are amending the Federal regulations at 30 CFR part 920, which codify decisions concerning the Maryland program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that Maryland's program demonstrate that it has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of Maryland and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

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 submittal that is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

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 submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 11, 2004.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 920 is amended as set forth below:

PART 920—Maryland

■ 1. The authority citation for part 920 continues to read as follows:

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

■ 2. Section 920.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 920.15 Approval of Maryland regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
September 16, 2003	March 11, 2004	COMAR 26.20.03.07.A, B; 26.20.03.11; 26.20.05.01, A, B, C, and L; and 26.20.25.02.D.

[FR Doc. 04–5499 Filed 3–10–04; 8:45 am]

BILLING CODE 4310–05–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 270

[Docket No. RM 2002–1E]

Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulations.

SUMMARY: The Copyright Office of the Library of Congress is announcing interim regulations specifying notice and recordkeeping requirements for use of sound recordings under two statutory licenses under the Copyright Act. Electronic data format and delivery requirements for records of use as well as regulations governing prior records of use shall be announced in future **Federal Register** documents.

EFFECTIVE DATE: The interim notice and recordkeeping regulations shall be effective beginning April 12, 2004. Updated notices of intent to use the statutory licenses under sections 112 and 114 are due July 1, 2004.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

I. Overview

Digital audio services provide copyrighted sound recordings of music for the listening enjoyment of the users of those services. In order to provide these sound recordings, however, a digital audio service must license the copyrights to each musical work, as well

as the sound recording of the musical work.[1] With respect to the copyright in the sound recording, the digital audio service may seek to obtain a licensing agreement directly with the copyright owner, or, if it is an eligible service,[2] may choose to license the sound recording through statutory licenses set forth in the Copyright Act, title 17 of the United States Code. There are two such licenses that enable an eligible digital audio service to transmit performances of copyrighted sound recordings to its listeners: section 114 and section 112 of the Copyright Act. Section 114 permits an eligible digital audio service to perform copyrighted sound recordings publicly by means of digital audio transmissions to its listeners, provided that the terms and conditions set forth in section 114 are met including the payment of a royalty fee. Section 112 permits an eligible digital audio service to make the digital copies of a sound recording that are necessary to transmit a performance of a sound recording to listeners,[3] provided again that the terms and conditions set forth in section 112 are met including the payment of a royalty fee.

The royalty fees collected under the two statutory licenses are paid to a central source known as a Receiving Agent.[4] *See* 37 CFR 261.2. Before the Receiving Agent, or any other agent designated to receive royalties from the Receiving Agent, can make a royalty payment to an individual copyright owner, they must know how many times the eligible digital audio service made use of the sound recording and how many listeners received it. To obtain this information, both section 112 and section 114 direct the Librarian of Congress to prescribe regulations that identify the use of copyrighted sound recordings (the ''recordkeeping'' provisions), as well as provide copyright owners with notice that a particular eligible digital audio service is making use of the section 112 and/or 114 license (the ''notice'' provisions). *See* 17 U.S.C. 112(e)(4) and 114(f)(4)(A). Today's interim regulations are the first step in complying with these requirements.

As discussed more fully *infra*, today's interim regulations set forth the requirements for an eligible digital audio service to file notification that it is using one or both of the statutory licenses, as well as the types and details of information that an eligible digital audio service must maintain in creating a record of use for each copyrighted sound recording it provides its listeners. There are two remaining issues. First, today's interim regulations only apply to the use of sound recordings from the effective date of the interim regulations and prospectively. There remains the issue of what types of information must be reported for uses of sound recordings prior to the effective date of this regulation and back to October 28, 1998. Second, there remains the issue of the character of the format in which records of use must be maintained, and what are the acceptable means of delivering the information contained in records of use to copyright owners of sound recordings.

II. Background

On February 7, 2002, the Copyright Office of the Library of Congress issued a Notice of Proposed Rulemaking (''NPRM'') on the requirements for giving copyright owners reasonable notice of the use of their sound recordings under the section 114 and 112 statutory licenses and for how records of such use shall be kept and made available to copyright owners. 67 FR 5761 (February 7, 2002). The proposed regulations set forth in the NPRM were taken, with some modifications, from the notice and recordkeeping regulations the Office had previously adopted for eligible preexisting subscription services making use of the section 114(f)(1)(A) statutory license. *See* 63 FR 34289 (June 24, 1998); 37 CFR 201.35–201.37.[5] The Office stated that although the existing regulations only applied to preexisting subscription services, it was the desire of the Office to adopt a single set of notice and recordkeeping regulations that would apply to any service claiming use of any of the statutory licenses set forth in section 114, as well as the section 112 statutory license for ephemeral recordings. 67 FR at 5762.

With respect to the notice provisions proposed in the NPRM, copyright owners and users voiced little disagreement. The details of the notice requirements being adopted by the Library are discussed below. With respect to what records of use of sound recordings should be kept, how they should be kept and in what manner they should be delivered to copyright owners, there was virtually no agreement between copyright owners and users. On May 10, 2002, the Office held a public meeting to facilitate discussion as to the required records of use, the frequency of the recordkeeping, and the manner and format for delivery to copyright owners. Persons representing copyright owners, users, and performers appeared and offered their opinions and criticisms of the NPRM and offered suggestions as to the amount of information necessary to distribute royalties collected under the section 112 and 114 licenses. The May 10 meeting revealed persistent differences as to the scope of the regulations, as well as the details for creating and delivering databases of records of use.

Subsequent to the May 10 meeting, the Office posted a notice on its website announcing the impending release of these interim regulations and describing in general the categories of information that will be required to be reported for performances of sound recordings governed by the section 112 and 114 licenses. These transitional requirements were memorialized in a September 23, 2002, **Federal Register** document. *See* 67 FR 59573 (September 23, 2002).

The need for announcing these transitional requirements was made evident during the course of discussions at the May 10 roundtable meeting. Although services making use of the statutory licenses in section 114 (other than the preexisting subscription service license) and section 112 have been doing so since the passage of the Digital Millennium Copyright Act in 1998, it became clear that many have not kept any records of the sound recordings which they have performed or the ephemeral copies they have made. This is unacceptable. The law requires a reporting of use of sound recordings sufficient to permit payment of royalties, and each day that passes results in the loss of records of performances that may never be accurately identified and reported. Furthermore, eligible nonsubscription digital transmission services have been required to make royalty payments

[1] Recorded music typically involves two separate copyrights. There is a copyright for the song itself—the music and the lyrics, if any—and there is a separate copyright for the sound recording of that music. The copyright to the musical work often belongs to the songwriter and/or his or her music publisher, and the copyright to the sound recording is generally owned by a record company that released the recording.

[2] These services are defined as preexisting subscription services, preexisting satellite digital audio radio services, business establishment services, nonsubscription services and new subscription services. These services are further discussed, *infra.*

[3] These copies are referred to as ''ephemeral copies,'' although they sometimes exist for a period of time that is far from the ordinary meaning of ''ephemeral.''

[4] Currently, the Receiving Agent is SoundExchange, Inc. *See* 37 CFR 261.4(c).

[5] These interim regulations place all notice and recordkeeping regulations pertaining to the statutory licenses under sections 112 and 114 into a new part 270. Accordingly, the notice and recordkeeping regulations currently located in §§ 201.35–201.37 have been moved to part 270.

under the section 112 and 114 licenses for eligible nonsubscription digital transmission services since October 20, 2002, meaning that a considerable amount of royalties (over five years' worth) should now be ready for distribution. Royalties cannot be allocated to owners, artists and performers until meaningful information regarding the instances of performances of specific sound recordings of musical works is provided by the services making use of the works. Publication of these interim regulations[6] will preserve the identification and reporting of as many performances under the section 112 and 114 licenses as possible.[7]

III. Prior Records of Use

The interim regulations announced today apply on a prospective basis, meaning that they apply to uses of sound recordings under the section 112 and 114 licenses occurring on and after the effective date announced above. There remains, however, the question of what records of use must be reported for uses of sound recordings from October 28, 1998, until the present. It was apparent from the discussions of the May 10, 2002, roundtable and subsequent filings that many services have maintained few or, in many instances, no records of prior uses. Incomplete and nonexistent records create serious difficulties for the fashioning of regulations that apply to prior uses of sound recordings. The Copyright Office has sought comment on the matter of prior records, *see* 68 FR 58054 (October 8, 2003), and will publish regulations in the future. In the meantime, both copyright owners of sound recordings and users of the section 112 and 114 licenses are strongly encouraged to resolve the matter in a way that will permit SoundExchange to distribute royalties for uses of sound recordings that took place prior to the effective date of these regulations. The Office would be pleased to consider any negotiated resolution as it determines the terms of the regulations to govern reporting on past uses of sound recordings.

IV. Format Requirements

Due to the highly technical nature of delivery of data in an electronic format and the widespread disagreement among SoundExchange and the users of the statutory licenses over formatting, the Copyright Office is unable to adopt data format and delivery regulations at this time. However, we will be publishing soon a Notice of Proposed Rulemaking in the **Federal Register** proposing electronic data format and delivery rules and will be seeking public comment. In the meantime, we strongly urge SoundExchange and services that will be making reports of use to negotiate acceptable means of data formatting and delivery. The negotiation process is better suited to targeting and resolving technical difficulties than an agency rulemaking process. Also, the more agreements that are reached, the greater the body of industry experience and practice that the Office can draw from in shaping final regulations.

V. The Small Webcaster Settlement Act of 2002

On December 4, 2002, the President signed into law the Small Webcaster Settlement Act of 2002, Public Law 107–321, 116 Stat. 2780, which permitted SoundExchange to enter into agreements on behalf of all copyright owners and performers to set rates, terms, and conditions for noncommercial and small commercial webcasters operating under the section 112 and 114 statutory licenses. The Act directs the Copyright Office to publish such agreements in the **Federal Register** and specifies that they may not be taken into account by the Office in formulating notice and recordkeeping provisions under the statutory licenses.

On December 24, 2002, the Copyright Office published the agreement for small commercial webcasters. 67 FR 78510 (December 24, 2002). That agreement specifies the types of data that must be reported by small commercial webcasters for the years 2003 and 2004. The agreement further provides, however, that

> [f]or calendar years 2003 and 2004, details of the means by which copyright owners may receive notice of the use of their sound recordings, and details of the requirements under which reports of use concerning the matters identified in Section 6(a)[8] shall be made available, shall be as provided in regulations issued by the Librarian of Congress under 17 U.S.C. 114(f)(4)(A).

Id. at 78512. Consequently, entities which are signatories to the agreement published on December 24, 2002, while not bound by the records of use provisions of these interim regulations, are bound by the interim notice regulations adopted herein.

On June 11, 2003, the Office published the agreement for noncommercial webcasters. 68 FR 35008 (June 11, 2003). That agreement provides that for 2003 and 2004, noncommercial webcasters are not required to provide any reports of use of sound recordings ''even if the Librarian of Congress issues regulations otherwise requiring such reports by Noncommercial Webcasters.'' *Id.* at 35011. Consequently, those entities that are signatories to the agreement published on June 11 are not bound by the records of use regulations announced in this notice for the years 2003–2004. These entities are still bound, however, by the notice provisions adopted today.

VI. Parties Affected

The Copyright Office announced in the NPRM that it intended to adopt a single set of notice and recordkeeping regulations for all four categories of services: Preexisting subscription services, preexisting satellite digital audio radio services, nonsubscription services, and new subscription services. 67 FR 5761, 5762 (February 7, 2002). The Office has been requested, however, to exclude preexisting subscription services and preexisting satellite digital audio radio services from this proceeding.

With respect to preexisting subscription services, the Recording Industry Association of America (''RIAA'') recommended in its petition that opened this rulemaking that preexisting subscription services be allowed to continue to operate under the rules set forth in former 37 CFR 201.36. RIAA petition at 1–2. Support for the proposal was echoed by the preexisting subscription services. Comments of Music Choice at 6 (submitted April 5, 2002); Comments of Music Choice at 1–2 (submitted September 30, 2002). Because copyright owners and preexisting subscription services appear content to operate under the existing recordkeeping provisions contained in former § 201.36 at this time,[9] the recordkeeping interim

[6] As discussed below, these interim regulations make some modifications to the requirements announced in the September 23, 2002, **Federal Register** document.

[7] The Office has also had discussions with copyright owners and users regarding the format in which records of use should be preserved, including a public meeting on October 8, 2002. See 67 FR 59547 (September 23, 2002). These discussions further underscored the difficulty of prescribing detailed electronic format and delivery requirements and have prevented including them in today's interim regulations. These requirements will be announced in a future **Federal Register** document.

[8] Section 6(a) of the agreement contains the details of the records of use that must be kept.

[9] On March 14, 2003, the Copyright Office received a joint petition from copyright owners and performers and preexisting subscription services to conduct an expedited rulemaking to modify the provisions of former § 201.36. The sought-after modifications, negotiated during the statutorily prescribed negotiation period for adjustment of rates and terms, would supercede the existing

Continued

regulations announced today will not apply to preexisting subscription services. Likewise, the notice provisions of § 270.1 (former § 201.35) announced today do not apply to preexisting subscription services.

On April 11, 2003, the Office received a petition from SoundExchange, XM Satellite Radio, Inc., Sirius Satellite Radio Inc., the American Federation of Radio and Television Artists, and the American Federation of Musicians stating that these entities had reached an agreement regarding notice and recordkeeping requirements for the period through December 31, 2006, and requesting that the Office defer adopting notice and recordkeeping regulations for preexisting satellite digital audio radio services at this time. The Office responded by letter dated May 8, 2003, denying the petition because ''it is the Library's responsibility, and the Library's responsibility alone, to promulgate rules establishing notice and record-keeping requirements.'' Copyright Office letter at 1 (May 8, 2003). We concluded that it is ''our duty to include provisions governing preexisting satellite digital audio radio services in the section 114 and section 112 notice and recordkeeping regulations that we are preparing for publication.'' *Id.* at 2. Although the parties to the agreement relating to preexisting satellite digital audio radio services could have requested that the Office adopt the notice and recordkeeping requirements they had negotiated, they did not do so. Indeed, the Office has no knowledge of the details of those negotiated requirements. Consequently, the interim regulations announced today apply to preexisting satellite digital audio radio services, as well as nonsubscription services, business establishment services and new subscription services. Presumably, however, no copyright owner who is a party to the negotiated agreement would be in a position to complain of the failure, by a service that is also a party to the agreement, to comply with the regulations announced today.

VII. Scope of the Reporting Requirements

In announcing today's required records of use on a prospective basis, it must be emphasized that they represent the minimum requirements. The Office recognizes that adopting detailed, comprehensive reporting requirements at this time could place a considerable burden on those services which have not yet developed methods for maintaining records of sound recording use. The prudent course therefore is to set forth minimum requirements for records that must be maintained, as well as the frequency with which they must be kept. It is highly likely that additional requirements will be set forth after the Office has determined the effectiveness of these interim rules.

VIII. The Proposals of the Commenters

A. Proposal of the Recording Industry Association of America

The Recording Industry Association of America (''RIAA'') [10] recommended that the Copyright Office require that services report to SoundExchange a comprehensive amount of data which it asserted was necessary for proper distribution of royalties under the section 112 and 114 statutory licenses. These requirements were set forth in the NPRM and are discussed there. See 67 FR 5761 (February 7, 2002). Subsequent to the NPRM, and due at least in part to concerns expressed by users of the statutory licenses regarding the privacy of user information in a listener log, RIAA revised its proposal and dropped its request that the requirements include a separate play list and listener log. Comments of RIAA at 33 (submitted April 5, 2002). RIAA submits that all the data elements it has requested for records of use are essential to the accurate and prompt identification of the ownership of each sound recording performed and to the efficient distribution of royalties. The more data that services using the statutory licenses submit, the more ''pieces to the puzzle'' there are for a correct royalty distribution. *Id.* at 39.

RIAA's proposed records of use are divided into three principal parts: (1) Information identifying the licensee as well as the type of service and programming offered by the licensee; (2) information regarding the digital audio transmissions of sound recordings; and (3) information regarding the specific sound recordings transmitted to the public.

1. *Data Identifying Service, Type of Service and Programming Offered.* RIAA proposes adoption of six different data fields for this category: (1) Service Name; (2) Transmission Category; (3) Channel or Program Name; (4) Type of Program; (5) Influence Indicator; and (6) Genre.

a. *Service Name.* The Service Name identifies the service reporting the use of a particular sound recording.

b. *Transmission Category.* The Transmission Category identifies the royalty structure for sections 112 and 114 that a service uses to calculate its royalty obligation. Because there are essentially many licenses within section 112 and section 114 (*e.g.,* a section 114 license for preexisting subscription services with one royalty rate, a section 114 license for nonsubscription services with different royalty rates), the Transmission Category is necessary to determine the royalty fee that is being paid for the particular use of a sound recording. RIAA offers ten category codes that identify each type of service using the section 112 and 114 licenses. *Id.* at 48–49.

c. *Channel or Program Name.* RIAA asserts that the Channel or Program Name is necessary to verify compliance with the sound recording performance complement set forth in 17 U.S.C. 114(j)(13). *Id.* at 49. SoundExchange also requests identification of the Channel or Program Name, but for purposes of royalty distribution. SoundExchange acknowledges that certain services lack the capacity to identify the number of performances (*i.e.,* the number of listeners) of a particular sound recording and recommends that those services report the number of Aggregate Tuning Hours (''ATH'') to a particular channel. However, in order for ATH to provide SoundExchange with meaningful distribution data, the service must report the Channel or Program Name to avoid under-valuing or over-valuing specific sound recordings. For example, if a service has two channels of programming that perform two different genres of music (one that has many listeners and one that does not), yet reports the same ATH for the two channels, the sound recordings on both channels will be valued equally even though the one channel received more listenership. However, if separate ATH are reported for each channel, the higher ATH for the more popular channel will be reflected and the sound recordings on that channel will receive a more accurate royalty distribution. Comments of SoundExchange at 17 n.6 (submitted September 30, 2002); Letter from SoundExchange to Copyright Office explaining footnote 6 (submitted October 28, 2002).

RIAA asserts that the Channel Name for an AM or FM radio station should be the Federal Communications Commission (''FCC'') facility identification number of the broadcast

recordkeeping provisions in former § 201.36. The petition will be addressed in a separate **Federal Register** document.

[10] RIAA's comments also include the views of SoundExchange which, at the time of submission of the initial comments, was an unincorporated division of RIAA. Comments of RIAA at 1 (submitted April 5, 2002).

station that is transmitted and the frequency band designation (ex. WABC–AM). The Channel Name for all other transmissions should be the service's name for such channel (ex. ''American Top 40,'' ''80's Rock'') ''provided that if a program is generated as a random list of sound recordings from a predetermined list, the channel or program must be a unique identifier differentiating each user's randomized playlist from all other users' randomized playlists.'' Comments of RIAA at 49–50 (submitted April 5, 2002) quoting the NPRM, 67 FR at 5766.

d. *Type of Program.* Identification of the Program Type ''is needed to ensure compliance with certain statutory provisions that establish duration requirements for particular programming.'' *Id.* at 50. RIAA proposes four categories for Type of Program: archived programs, looped programs, prescheduled programs and a category for all other programs. *Id.*

e. *Influence Indicator.* RIAA asserts that:

> The Influence Indicator field is needed because certain services provide the user with an ability to skip forward through a play list at the user's sole discretion. Although RIAA believes that the use of a ''skip'' feature may render certain services interactive and, therefore, ineligible for the statutory license, a limited skip feature may eventually be determined to be eligible for the statutory license. If such services are determined to be eligible for the statutory license subject to certain conditions, then copyright owners will need to know which services offer a skip feature and whether those required conditions are satisfied.

Id. at 51. RIAA proposes two categories for the Influence Indicator: non-user influenced and user influenced.

f. *Genre.* The Genre field provides assistance in distinguishing among sound recording copyright owners with the same name that own different repertoire. The Genre field would apply to the designation that a service gives to a particular channel (ex. Rock, Classical) not to a particular sound recording. *Id.* at 51–52.

2. *Data Regarding the Transmissions of Sound Recordings.* RIAA proposes two categories of information regarding the transmissions of sound recordings: (1) Start Date and Time of the Sound Recording's Transmission; and (2) Total Number of Performances.

a. *Start Date and Time of the Sound Recording's Transmission.* RIAA asserts that this information is necessary to assure that services are complying with the sound recording performance complement. It also asserts that the information is necessary because members of SoundExchange may ''decide to weight performances based upon the time of day that the transmission is made, with performances during the day being weighted more heavily than overnight performances.'' *Id.* at 52.

b. *Total Number of Performances.* RIAA asserts that Total Number of Performances is critical to distributing royalties collected under the section 114 license. Since the royalties paid by services under the license are on a per performance basis, see 67 FR 45240, 45272 (July 8, 2002), the services already have this information; and it is essential to the distribution mechanism mandated by the Librarian for non-SoundExchange members. *See* 37 CFR 261.4.

3. *Data for Identifying Each Sound Recording.* RIAA proposes ten categories of information for the identification of each sound recording: (1) Artist Name; (2) Sound Recording Title; (3) Album Title; (4) International Standard Recording Code (''ISRC''); (5) Track Label (P) Line; (6) Duration of Sound Recording; (7) Marketing Label; (8) Catalog Number; (9) Universal Product Code; and (10) Release Year.

a. *Artist Name* and b. *Sound Recording Title*

RIAA asserts that these two elements are the most basic information necessary to identify a sound recording and must be reported in all instances. Comments of RIAA at 55 (submitted April 5, 2002).

c. *Album Title.* RIAA asserts that Album Title is necessary to assist in differentiating a song by a particular artist that appears on more than one record album where the copyright owners of the album are different. For example, the Alice Cooper sound recording ''I'm 18'' appears on both the ''Classicks'' and ''Love it to Death'' record albums. Epic Records is the owner of the ''Classicks'' album, while Warner Bros. is the owner of the ''Love it to Death'' album. If the Designated Agents distributing royalties do not know from which album the service performed ''I'm 18,'' they cannot properly distribute royalties. Reply comments of RIAA at 57–58 (submitted April 26, 2002).

d. *International Standard Recording Code (''ISRC'').* The International Standard Recording Code (''ISRC'') is a unique code that is embedded in many sound recordings released in recent years and is capable of being read with the proper computer software. Because ISRC is unique to each sound recording that possesses it, it is extremely useful in specifically identifying a particular sound recording. Comments of RIAA at 56–57.

e. *Track Label (P) Line.* The Track Label (P) Line is the copyright owner information for an individual sound recording. According to RIAA, a Track Label (P) Line can be found on the backside of the label packaging after the (P) Line symbol. If the album is a compilation, the Track Label (P) Line information can be found inside the label package insert following the listing of each sound recording. *Id.* at 57. The copyright owner listed in the Track Label (P) Line is generally the entity entitled to royalties for the public performance of the sound recording, but is not the complete information necessary to distribute royalties under the section 112 and 114 licenses. *Id.*; Reply comments of RIAA at 63–64.

f. *Duration of Sound Recording.* Duration of the Sound Recording is the total recorded time of that sound recording as identified on the label packaging for that version of the musical work, regardless of the time that it takes the service to transmit the sound recording. RIAA asserts that this information is necessary to help distinguish among remixes of the same sound recording by the same artist. Comments of RIAA at 57–58 (submitted April 5, 2002).

g. *Marketing Label.* The Marketing Label is the name of the company that markets the album on which a particular sound recording may be found. RIAA states that often, but not always, the company name on the Track Label (P) Line will be the same as the Marketing Label; hence both data fields must be provided. *Id.* at 58.

h. *Catalog Number.* The Catalog Number is the unique number assigned by a particular record label to an album, as opposed to the particular sound recording on the album, for purposes of ordering and inventory management. RIAA asserts that services should provide this information because it is required in the Copyright Office regulations for preexisting subscription services. *See* 63 FR 34289, 34297 (June 24, 1998).

i. *Universal Product Code (''UPC'').* The Universal Product Code (''UPC'') is a 12-digit numeric identification code that is placed on products intended for retail sale and is read by automated scanning devices (*i.e.* the ''bar code'' number). Unlike an ISRC, which is unique to a sound recording, a UPC is unique to a particular product (*i.e.* CD, cassette, LP). RIAA asserts that the UPC is necessary to assist in correctly identifying the origin of a sound recording. Comments of RIAA at 58–59 (submitted April 5, 2002).

j. *Release Year.* The Release Year is the year the album was first released

commercially for public distribution as identified on the backside of the label packaging after the (P) Line symbol. Again, RIAA asserts that Release Year is necessary to correctly identify the origin of a sound recording. *Id.* at 59.

B. Proposal of the American Federation of Musicians and the American Federation of Televison and Radio Artists

The American Federation of Musicians (''AFM'') and the American Federation of Television and Radio Artists (''AFTRA'') endorse the proposal of RIAA for records of use data

> because those rules appear to require records of use that are adequate to fulfill the important Congressional objective of compensating each featured recording artist for use of his or her unique sound recordings, and * * * will further assist in fulfilling the equally important Congressional purpose of also compensating non-featured recording artists who have performed on sound recordings used by the services.

Joint comments of AFM/AFTRA at 2 (submitted April 5, 2002). However, AFM/AFTRA urge that the Copyright Office require an additional data field that requires services to enter the names of all non-featured singers and musicians on each sound recording when the services are in possession of that information. They assert that this information is essential to distribute the modest amount of royalties allocated to non-featured singers and musicians under the section 114 license. If the burden to obtain this information is placed upon the administrator of these royalties, the costs associated with obtaining it will exceed the royalties. *Id.* at 16–20.

C. The Services' Proposals

Not surprisingly, the services using the section 112 and 114 statutory licenses vehemently object to the amount and character of information sought by RIAA and SoundExchange. Some assert that much of the information sought is not generally available and that the cost of providing it will drive certain services out of business. There is no unanimity among the services as to what information can be provided, although they certainly all prefer to provide less rather than more.

1. *Proposals of Broadcasters.* Bonneville International Corporation, Clear Channel Communications, Cox Radio, Inc., National Association of Broadcasters, Susquehanna Radio Corporation, National Religious Broadcasters Music License Committee and Salem Communications Corporation (collectively ''Radio Broadcasters'') argue that RIAA and SoundExchange have the burden of proving why each element of requested data is necessary for the collection and distribution of royalties, a burden which they assert that RIAA and SoundExchange have failed to meet. Comments of Radio Broadcasters at 2 (submitted April 5, 2002). They also submit that the Copyright Office should only require information necessary to identify a sound recording for purposes of royalty distribution and should not require information that enables RIAA to monitor the sound recording complement requirements of section 114. *Id.* at 17–21. Smaller broadcasters charge that RIAA and SoundExchange are seeking data that they know smaller broadcasters cannot possibly supply. Comments of Collegiate Broadcasters at 2–3 (submitted April 5, 2002); Comments of National Federation of Community Broadcasters at 3 (submitted April 5, 2002); Comments of Harvard Radio Broadcasting Company at 8 (submitted April 5, 2002).

Indeed, smaller broadcasters—in particular noncommercial broadcasters—request that the Copyright Office exempt them from any record of use reporting requirements. Comments of College Broadcasters at 1–2 (submitted April 5, 2002); Comments of Collegiate Broadcasters at 3–4 (submitted April 5, 2002); Comments of Harvard Radio Broadcasting Company at 2 (submitted April 5, 2002); Comments of Intercollegiate Broadcasting System at 1 (submitted April 5, 2002); Comments of Mayflower Hill Broadcasting Company at 2 (submitted April 5, 2002); Comments of National Federation of Community Broadcasters at 3 (submitted April 5, 2002); Comments of WOBC at 2 (submitted April 5, 2002); Comments of Adventist Radio Broadcasters Association at 4 (submitted April 5, 2002). These commenters note that they possess neither the manpower nor the financial resources to assemble and enter the data requested by RIAA. Many of these stations depend upon volunteer help that cannot be required to undertake the task of preparing such detailed reports of use. Their general recommendation is that radio stations with ten or fewer paid employees be fully exempted from reporting records of use. See, e.g. Comments of National Federation of Community Broadcasters at 5 (submitted April 5, 2002); Reply Comments of Radio Broadcasters at 35 (submitted April 26, 2002); Comments of College Broadcasters at 22 (submitted April 5, 2002).

Radio Broadcasters submit that only five data fields should be required for records of use: (1) Name of the service; (2) sound recording title; (3) name of artist; (4) call sign of the station or channel; and (5) date of transmission. Comments of Radio Broadcasters at 41 (submitted April 5, 2002). They contend that while this information may not enable SoundExchange to identify every entity entitled to a distribution royalty every time, such perfection is not required because the law requires only ''reasonable'' notification of use. *Id.* Radio Broadcasters, as well as other services, contend that they cannot supply the additional fields of data requested by RIAA because, in many instances, they are not supplied with the information from the record label. This is particularly the case with new releases where the service receives a promotional sound recording which has yet to be placed on an album, receive an ISRC, UPC, catalog number, Track Label (P) Line, etc. Even if this information is received at a later date or can be later determined, it is unreasonably burdensome to require services to seek it out and report it. Comments of Radio Broadcasters at 44–54 (submitted April 5, 2002); Comments of beethoven.com at passim (submitted April 5, 2002).

Radio Broadcasters also indicate that there are special reporting difficulties associated with musical programming obtained from third-party syndicators. These syndicators provide little if any information regarding the sound recordings that they perform. Requiring the broadcaster of this programming to track down the information would be unduly burdensome. Comments of Radio Broadcasters at 31–33 (submitted April 5, 2002). A similar problem also exists for programming which is broadcast live or in a ''free flow'' fashion. Comments of Harvard Radio Broadcasting Company at 7 (submitted April 5, 2002).

2. *Proposals of Non-broadcaster Services.* Non-broadcaster services (*i.e.,* webcasters) are generally prepared to provide more data than broadcasters although certainly well short of RIAA's requests. For example, David Landis, founder of Ultimate 80's, states that he has ''spoken with many of my fellow webcasters'' and can provide the following data: (1) The name of the service; (2) the channel of the program; (3) the type of the program (archived, looped or live); (4) the date of the transmission; (5) the time of the transmission; (6) the time zone of the origination of the transmission; (7) the duration of the transmission (to the nearest second); (8) the sound recording title; (9) the featured recording artist; and (10) the musical genre of the channel or program (*i.e.* the station format). Comments of Ultimate 80's at 4 (submitted April 5, 2002).

Beethoven.com proposes the same requirements, with the exception of providing data on the duration of the transmission of a sound recording. Comments of Beethoven.com at 5 (submitted April 5, 2002).

Websound, Inc. recommends an even more extensive list of requirements. It states that it can supply: (1) The name of the service; (2) the channel or program, or in the case of transmission of an AM or FM signal, the station identifier including the band designation and the FCC facility identification number; (3) the type of program (archived, looped or live); (4) the date of transmission (except for archived programs); (5) the time of transmission (except for archived programs); (6) the time zone from which the transmission originated; (7) for archived programs, the numeric designation of the pace of the sound recording within the order of the program; (8) the duration of the transmission (to the nearest second); (9) the sound recording title; (10) the ISRC, where available; (11) the release year identified in the copyright notice on the album and, in the case of compilation albums created for commercial purposes, the release year identified in the copyright notice for the individual track; (12) the featured recording artist; (13) the album title or, in the case of compilation albums created for commercial purposes, the name of the retail album identified by the service for purchase of the sound recording; (14) the marketing label; (15) the UPC; (16) the catalog number; (17) the Track Label (P) Line; (18) the musical genre of the channel or program, or in the case of the transmission of an AM or FM station, the broadcast station format. Comments of Websound, Inc. at 1–2 (submitted April 5, 2002).

Yahoo, Inc. submits that the Copyright Office should adopt only minimal reporting requirements for webcasting and broadcast retransmissions that would include the call letters of the AM or FM station, the format of the station or program (music or talk), the genre of the station or program and the cumulative number of listening hours to each station during the reporting period. Reply comments of Yahoo at 4, 10 (submitted April 26, 2002).

The Digital Media Association (''DiMA'') argues that much of the information sought by RIAA and SoundExchange is redundant and should not be required. It suggests that services should be able to choose the data fields that they supply provided that the information is sufficient to identify the sound recording used. For example, DiMA asserts that any one of the following groups of information is, by itself, sufficient to identify a sound recording:

(1) Sound recording title, featured recording artist, group, or orchestra, the retail album title, and the Track Label (P) Line;
(2) Sound recording title, UPC and the Track Label (P) Line;
(3) ISRC and the Track Label (P) Line.

Comments of DiMA at 4 (submitted April 5, 2002).

Like Radio Broadcasters, DiMA argues that information sought by RIAA to monitor the sound recording complement of section 114 should be outside the scope of records of use requirements. *Id.* at 5; see, also Reply comments of Yahoo, Inc. at 2 (submitted April 26, 2002). And with regards to reporting requirements for programming provided by third parties, DiMA submits that existing third-party contracts should be grandfathered from reporting. *Id.* at 7.

IX. Required Records of Use

A. Consideration of the Comments

Deciding which data fields should be required for a record of use under the section 114 license presents a difficult challenge for the Copyright Office. There are many interests which must be considered and balanced. On the one hand, there must be sufficient information reported so as to accurately identify the sound recordings performed. This is necessary so that royalties may be paid to the proper parties and to avoid not compensating a large number of performances simply because there was insufficient information. On the other hand, the burdens associated with reporting information cannot be so high as to be unreasonable or to create a situation where many services cannot comply.

It has been asserted by some services throughout this docket that for some services any reporting of information regarding performances will be too great a burden. While this assertion, if true, might result in certain services ceasing operation under the statutory licenses, it is not a valid reason to eliminate reporting altogether. The law states that the Librarian of Congress must adopt regulations under the section 114 license to provide copyright owners of sound recordings with ''reasonable notice'' of the use of their sound recordings. 17 U.S.C. 114(f)(4)(A).[11] No provision is made for not adopting regulations in certain circumstances, or for exempting certain services from any reporting information. As discussed above, certain services—in particular noncommercial broadcasters—seek a complete exemption from reporting any data. Others are willing to report data for the sound recordings they perform themselves, but seek an exemption for sound recordings they receive from third-party syndicators. We find no authority in the statute to create such exemptions, nor do we find such exemptions as constituting ''reasonable notice'' of the performance of sound recordings.[12] In order to avail oneself of the statutory licenses, one must report some information. The question is how extensive that information should be.

In principle, one might imagine that recordkeeping for many webcasters could be a simple matter. Webcasting necessarily requires use of computers for storage and transmission of the performances of sound recordings. Thus, webcasters might be expected to have the requisite resources and sophistication to maintain and transmit detailed reports identifying each and every sound recording they transmit, as well as the number of performances transmitted.

If webcasters have the sophistication and equipment to facilitate the recordation and reporting of information, the webcasting statutory license could offer an opportunity to ensure that each copyright owner of each sound recording performed by webcasters will be compensated for exactly his or her share of the royalties generated by the statutory license. Because SoundExchange could, in theory, obtain perfect information about the number of performances of each sound recording, it could divide the total royalty pool by the total number of performances of all sound recordings, and then allocate to each sound recording the corresponding share based on the number of times it is performed.

However, many webcasters assert that the burden of keeping comprehensive

[11] A similar provision exists for use of the section 112 license. See 17 U.S.C. 112(e)(4).

[12] One could argue that reporting the use of sound recordings is not ''reasonable'' if a service cannot under any circumstances provide information about the sound recordings. Even if the Office were persuaded that some services cannot report any data—which we are not—the argument would be unpersuasive. Transmitting a sound recording to the public is not something that accidentally or unknowingly happens. It takes a significant amount of decision making and action to select and compile sound recordings, and a significant amount of technical expertise to make the transmissions. It is not unreasonable to require those engaged in such a sophisticated activity to collect and report a limited amount of data regarding others' property which they are using for their benefit. While making and reporting a record of use is undoubtedly an additional cost of transmitting sound recordings to the public, it is not an unreasonable one.

records would drive them out of business. *See, e.g.*, Reply Comments of a United Group of Webcasters at 3; Comments of Mayflower Hill Broadcasting Corp. at 1–2; Comments of Collegiate Broadcasters, Inc. at 2–3; Reply Comment of Harvard Radio Broadcasting Company at 6–7. We recognize that there will be some burden involved in reporting information on each sound recording performed, and as more information is required for each sound recording, the burden becomes greater. Although the ultimate goal is to require comprehensive reporting on each performance a webcaster makes, that goal is not achievable at this time. Therefore, the regulations announced today will not require year-round reporting, but only reporting for certain periods during the year, and the information that webcasters must provide will be less comprehensive than copyright owners desire.

In selecting the data fields described below, the Copyright Office was guided by several principles. First, we have not adopted any data fields proposed by RIAA which are not for the purpose of making royalty distributions under the section 112 and 114 licenses. RIAA has requested data for purposes of monitoring the sound recording performance complement in 17 U.S.C. 114(j)(13) (Start Date and Time of the Sound Recording's Transmission),[13] for monitoring requirements regarding the duration of programming 17 U.S.C. 114(d)(2)(C)(iii) (Type of Program), and to assist in determining whether a service is interactive (Influence Indicator). RIAA points to the Copyright Office's decision in the preexisting subscription service rulemaking to adopt reporting requirements designed to permit monitoring of the sound recording performance complement, 63 FR 34289 (June 24, 1998), and argues that the decision must be applied in this docket. Reply Comments of RIAA at 15 (submitted April 26, 2002). In that rulemaking proceeding we said:

> The Office considered arguments of DCR and other Services that the Act imposes no obligation to affirmatively report compliance with the complement, but reaffirms its earlier judgment. The Office notes that conforming to the performance complement is a condition of the statutory license, and a Service that complies with the regulatory notice requirements and pays the statutory royalties thereby avoids infringing the copyright owners' exclusive rights. 17 U.S.C. 114(d)(2), (f)(5). The Office determines, therefore, that it is within its rulemaking authority under section 114(f)(2) to require reporting of complement information. See *Cablevision Sys. Devel. Corp.* v. *Motion Picture Ass'n*, 836 F.2d 599 (D.C. Cir. 1988) (Copyright Office had authority to issue regulations interpreting statute). The Office believes that the presence and specificity of the performance complement indicates Congress' intent that records of use include data to test compliance. While section 114(j)(7) provides that transmissions from multiple phonorecords exceeding the performance complement's numerical limitations will nonetheless conform to the complement if the programming of multiple phonorecords was not ''willfully intended'' to avoid the numerical limitations, a pattern of conduct might provide evidence of the requisite intent.

63 FR at 34294.

The reasoning for requiring performance complement data in the preexisting subscription service rulemaking does not necessarily apply with the same force to these interim regulations. While there is evidence of legislative intent for services to report performance complement data, as well as other data related to compliance with the terms of the license, such data is not useful when it is limited to only two weeks per calendar quarter. See discussion of reporting periods, *infra.* Given that reporting of such limited data will not serve the purpose of monitoring statutory compliance and given the burden upon services for reporting the data, we are not requiring it at this time. The matter may be further addressed in the final regulations in this docket.

The second principle guiding our selection of data fields is a cost/benefit analysis. The Office has chosen to adopt interim regulations at this time to afford services an ample period of time to adjust to the process of reporting. It is evident from the statements made by certain services at the meetings held by the Office in this docket that in many cases up to now little or no gathering of data has taken place. Given this notable lack of activity, imposition of extensive and detailed reporting requirements at this time could increase the instances of noncompliance by services unprepared to report data and could substantially raise the reporting error rates for services that do fully comply. Consequently, the Office has chosen to require a minimal level of reporting at this time that will permit the distribution of royalties (albeit imperfectly). These baseline requirements will be revisited in the final regulations after the Copyright Office has had sufficient time to assess their effectiveness and consider ways in which data reporting may be improved.[14]

By applying these principles to the 18 data fields requested by RIAA and the fields requested by AFM and AFTRA, the Copyright Office has settled upon the fields which must be reported by services using the section 112 and 114 statutory licenses. With respect to RIAA's requests, we are not requiring Start Date and Time of the Sound Recording's Transmission, Type of Program and Influence Indicator because these data fields are for purposes of monitoring compliance with the limitations of the section 114 license. As discussed above, requiring these fields would be unnecessarily burdensome especially in light of the fact that the two-week-per-calendar-quarter reporting requirement renders the information collected from these fields of little or no value in enforcing the requirements of the section 114 license.

The Office also has not chosen to require reporting of the Track Label (P) Line, the Duration of the Sound Recording, the Catalog Number, the UPC and the Release Year, the reporting of which would be unduly burdensome at this time. As Radio Broadcasters stated in their comments, these pieces of information are frequently not provided to services until well after the initial transmissions of the sound recordings. While the information is discoverable at a later date, researching it and revising prior records of use would involve significant costs.

Finally, we are not adopting the proposal of AFM and AFTRA to report data regarding nonfeatured vocalists and musicians. Many sound recordings have numerous nonfeatured musicians and vocalists which would require large amounts of data entry into a report of use. Entering lists of names of performers into a report of use would be a prohibitively costly undertaking for services that would raise the likelihood of noncompliance and error rates in reporting. Furthermore, we are focused upon identifying and reporting the use of sound recordings, not performers associated with the sound recordings. AFM and AFTRA's proposal is not consistent with the goal of this interim

[13] RIAA also states that it may use data regarding the Start Date and Time of the Sound Recording's Transmission for distribution purposes when audience size is not reported. Comments of RIAA at 52 (submitted April 5, 2002). Reporting of the number of performances of a sound recording is discussed *infra*, and data regarding the Start Date and Time of the Sound Recording's Transmission is not necessary.

[14] While the data fields required by these interim regulations are the baseline requirements, there is no prohibition on services reporting additional data. As discussed above, webcaster services appear capable of providing more data than broadcaster services. Delivery of additional data is encouraged, and services wishing to do so should contact SoundExchange to make arrangements for providing the additional information.

regulation to establish merely baseline reporting requirements and cannot be adopted at this time.

B. The Record of Use Reporting Regime

In this section the Copyright Office sets forth the reporting regime for the use of sound recordings under the section 112 and 114 statutory licenses.[15] In the interest of regulatory flexibility and providing services with the opportunity to reduce their reporting burden, we are prescribing a reporting regime that, in two instances, permits the entry of a single amount of data in lieu of additional separate categories of data identifying the sound recording and its use. The reporting regime is as follows:

1. Name of Service
2. Transmission Category
3. Featured Artist
4. Sound Recording Title
5. Sound Recording Identification
   Album Title
   Marketing Label
   OR
   International Standard Recording Code (ISRC)
6. Total Performances
   Aggregate Tuning Hours
   Channel or Program Name
   Play Frequency
   OR
   Actual Total Performances

Under this reporting regime, a service may report as few as six items of data per sound recording or as many as eight depending upon the amount of reporting data available to each service. A service that has ISRC data and Actual Total Performances data for a sound recording need only report its Name, the Transmission Category, the Featured Artist, the Sound Recording Title, ISRC, and Actual Total Performances for the sound recording.[16] A service which has the ISRC but not the Actual Total Performances data, may report the ISRC and in addition must report its Name, Transmission Category, Featured Artist, Sound Recording Title, Aggregate Tuning Hours, Channel or Program Name, and Play Frequency. Likewise, a service which has Actual Total Performances data but not ISRC may report Actual Total Performances and then must report its Name, Transmission Category, Featured Artist, Sound Recording Title, Album Title, and Marketing Label. And a service which has neither ISRC nor Actual Total Performances data for a sound recording must report its Name, Transmission Category, the Featured Artist, Sound Recording Title, Album Title, Marketing Label, Aggregate Tuning Hours, Channel or Program Name, and Play Frequency.

C. Details of the Data Fields for a Record of Use

1. *Name of Service.* The Name of Service is a mandatory reporting category. The Name of Service is the full legal name of the service making the transmissions.

2. *Transmission Category.* The Transmission Category is a mandatory reporting category. Because the various statutory licenses contained in section 114 have differing royalty structures, and because many services frequently operate under more than one license, it is necessary to identify the category under which the performance of a sound recording is made. Services shall use the following category codes to identify each sound recording performed:

Category code	Description
A	Eligible nonsubscription transmission other than broadcast simulcasts and transmissions of non-music programming.
B	Eligible nonsubscription transmission of broadcast simulcast programming not reasonably classified as news, talk, sports or business programming.
C	Eligible nonsubscription transmission of non-music programming reasonably classified as news, talk, sports or business programming.
D	Eligible nonsubscription transmission by a non-Corporation for Public Broadcasting noncommercial broadcaster making transmissions covered by 37 CFR 261.3(a)(2)(i) and (ii).[17]
E	Eligible nonsubscription transmission by a non-Corporation for Public Broadcasting noncommercial broadcaster making transmissions covered by 37 CFR 261.3(a)(2)(iii).[18]
F	Eligible nonsubscription transmission by a small webcaster operating under an agreement published in the **Federal Register** pursuant to the Small Webcaster Settlement Act.
G	Eligible nonsubscription transmission by a noncommercial broadcaster operating under an agreement published in the **Federal Register** pursuant to the Small Webcaster Settlement Act.
H	Transmission other than broadcast simulcasts and transmissions of non-music programming made by an eligible new subscription service.
I	Transmission of broadcast simulcast programming not reasonably classified as news, talk, sports or business programming made by an eligible new subscription service.
J	Transmission of non-music programming reasonably classified as news, talk, sports or business programming made by an eligible new subscription service.
K	Eligible transmission by a business establishment service making ephemeral recordings.

3. *Featured Artist.* The Featured Artist category is a mandatory reporting category for each sound recording. Each service must provide the name of the featured artist for each sound recording it transmits during the relevant reporting period. If the featured artist is an individual or an entity such as a band, the full name must be reported. In those instances where the songwriter and the featured artist are different, care must be taken in reporting only the featured artist. For example, if the sound recording is a performance of the Boston Philharmonic Orchestra of a

[15] As discussed, *infra*, the required data fields for a record of use under the section 114 license are the same for a record of use under the section 112 license. Services using both licenses only need report the required data fields once for each sound recording.

[16] Simply because a service has the ISRC and/or Actual Total Performances for a sound recording does not mean the service must report this data in lieu of the alternative categories. The purpose of reporting ISRC and/or Actual Total Performances is to reduce the categories of data that a service must report for each sound recording. If, for example, a service possesses the ISRC for a sound recording but prefers instead to report the Sound Recording Title, Album Title and Marketing Label instead, it is free to do so.

[17] Transmissions covered by these provisions include simultaneous Internet retransmissions by non-Corporation for Public Broadcasting noncommercial broadcasters of over-the-air AM or FM broadcasts by the same radio station and other Internet transmissions of non-Corporation for Public Broadcasting noncommercial broadcasters, including up to two side channels of programming consistent with the mission of the station, and are subject to a section 114 royalty of 0.02 cents per performance.

[18] Transmissions covered by this provision include Internet transmissions on other side channels of programming by non-Corporation for Public Broadcasting noncommercial broadcasters and are subject to a section 114 royalty of 0.07 cents per performance.

work by Mozart, the featured artist should be reported as the Boston Philharmonic Orchestra, not Mozart. Likewise, where the sound recording performed is taken from an album that contains various featured artists (*i.e.*, a compilation), it is not acceptable to report the artist as ''Various.'' The featured artist of the particular sound recording track performed must be reported.

4. *Sound Recording Title.* As with the featured artist, care must be taken in accurately reporting the title of the sound recording (*i.e.*, the song title). It is not acceptable to report the name of the album from which the sound recording is taken.

5. *Sound Recording Identification:*

a. International Standard Recording Code (ISRC). The International Standard Recording Code (''ISRC'') is the unique identifier that identifies each version of a sound recording. It is imbedded in promotional and commercially released sound recordings and can be read by currently available software. A service may report the ISRC of a sound recording in lieu of the Sound Recording Title, Album Title and Marketing Label. However, identification of the Featured Artist is still required. The purpose of this requirement is to permit verification of the correct ISRC by allowing SoundExchange to identify and correct reports where the Featured Artist does not match the information associated with the ISRC.

b. For those services that do not report the ISRC for a sound recording, the Album Title and Marketing Label must be reported.

(i) Album Title. According to the comments and the May 10, 2002, public meeting, the title of an album on which a particular sound recording appears may not be determined at the time the sound recording is released to broadcasters and webcasters for performance; or the album title information may not be supplied by the recording label. Consequently, services need only report the album title for a particular sound recording when they have that information in their possession, or it has been supplied by the recording label, at or before the time of performance of the sound recording.

Those services which copy sound recordings into databases for subsequent transmission to their users and do not enter the album title into that database are nonetheless responsible for providing the album title if that information was in their possession, or been supplied to them, at or before the time the sound recording was performed.

(ii) Marketing Label. The Marketing Label is the name of the company that markets the album which contains the sound recording. As with album titles, it is sometimes the case that services do not possess, or are not supplied with, the name of the marketing label for the sound recording. Services need only report the marketing label if that information was in their possession, or was supplied to them by the marketing label, at or before the time the performance of the sound recording is made. Discarding marketing label information, or not including it in the database into which the sound recording is copied, does not relieve the service of the obligation to report the information.

6. *Total Performances.* Services must provide the total number of performances of each sound recording during the relevant reporting period. Section 261.2, 37 CFR, defines a ''performance'' as:

> [E]ach instance in which any portion of a sound recording is publicly performed to a Listener by means of a digital audio transmission or retransmission (*e.g.* the delivery of any portion of a single track from a compact disc to one Listener) but excluding the following:
>
> (1) A performance of a sound recording that does not require a license (*e.g.* the sound recording is not copyrighted);
>
> (2) A performance of a sound recording for which the service has previously obtained a license from the Copyright Owner of such sound recording; and
>
> (3) An incidental performance that both: (i) Makes no more than incidental use of sound recordings, including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events; and
>
> (ii) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

See, 69 FR 5693 (February 6, 2004).

Certain services argue that it is not possible, in many circumstances, to keep track of the number of performances of a sound recording. *See, e.g.* Comments of Harvard Broadcasting Radio Company at 2 (submitted September 30, 2002); Comments of NRBMLC and Salem Communications Corp. at 4 (submitted September 30, 2002); Comments of Collegiate Broadcasters, Inc. at 6–7 (submitted September 30, 2002). Obviously, repeated failures by multiple services to report the number of performances of a sound recording will subvert the purpose of the recordkeeping requirement in that many sound recordings will be under-compensated or not compensated at all from the section 114 and 112 royalties. The Copyright Office is therefore permitting services to identify the total number of performances of a sound recording during the reporting period in one of two ways: Actual Total Performances or Aggregate Tuning Hours, Channel or Program Name, and Play Frequency.

a. Actual Total Performances. For those services that possess the technological ability to identify accurately the number of times that a sound recording is performed (such as those that generate intended play lists), the number of performances must be reported in the performance data field. The data reported in this field may be for each time the sound recording is transmitted or ''played'' during the reporting period, or for all Actual Total Performances of the sound recording during the relevant reporting period.[19]

b. For those services that lack the technological ability to report the actual number of performances, or choose not to report such information, the Aggregate Tuning Hours, Channel or Program Name, and Play Frequency information must be reported for each sound recording.

(i) *Aggregate Tuning Hours.* Aggregate Tuning Hours (''ATH'') are a standard measure of listenership that can be used to estimate the Actual Total Performances of sound recordings. Aggregate Tuning Hours measure the total number of listener hours by all who have accessed the service during a given period of time. According to certain broadcasters, ATH for AM/FM radio stations are readily calculable by a service. See Joint Reply Comments of Radio Broadcasters at 26 (submitted April 26, 2002).

Aggregate Tuning Hours do not, by themselves, provide sufficient information on which to estimate the Total Performances of a sound recording. However, when combined with information regarding the Channel or Program Name on which the sound recording appeared and the Play Frequency, Aggregate Tuning Hours will permit SoundExchange to estimate the Total Performances for a sound recording during the reporting period.

[19] If a service chooses to enter the Actual Total Performance data for each time the sound recording is transmitted or ''played,'' it will be required to repeat the full data for the sound recording to account for all transmissions or ''playings'' of the sound recording during the relevant accounting period.

See Comments of SoundExchange, Inc. at 17 n.6 (submitted September 30, 2002). Services electing to report Aggregate Tuning Hours for a sound recording in lieu of the Actual Total Performances must report the Aggregate Tuning Hours for the two-week reporting period selected by the service for the channel or program on which the sound recording was performed. If the same sound recording was performed on more than one channel or program, a complete separate record of use must be reported for each channel or program. Under no circumstances may a service fail to report any data in the performance data field when submitting a record of use of a sound recording.

(ii) *Channel or Program Name.* The Channel Name for an AM or FM radio station should be the FCC facility identification number (*e.g.*, WABC–FM). For all other transmissions, the Channel or Program Name should be the name assigned by the service (*e.g.*, ''Oldies Hits,'' ''70's Rock''), ''provided that if a program is generated as a random list of sound recordings from a predetermined list, the channel or program must be a unique identifier differentiating each user's randomized playlist from all other users' randomized playlists.'' 67 FR 5761, 5766 (February 7, 2002).

(iii) Play Frequency. Aggregate Tuning Hours and Channel or Program Name are not sufficient, by themselves, to permit an equitable distribution of royalties collected under the section 112 and 114 licenses. A sound recording which is played 100 times during the two-week reporting period is of greater value and should receive a larger distribution of royalties than a sound recording played only once during that same period. Consequently, it is necessary for services that elect not to report Actual Total Performances to report the number of times each sound recording is played during the two week reporting period.

Play Frequency is different than performance data. According to the definition of ''performance'' in 37 CFR 262.2, a sound recording is performed each time a listener receives at least some portion of the sound recording. A sound recording that is received in some part by 10 listeners constitutes 10 performances of that sound recording. In contrast, ''played'' simply means the overall number of times a sound recording is offered, regardless of the number of listeners receiving the sound recording. If a particular sound recording is offered to listeners on a particular channel or program only once during the two-week reporting period, then it is only ''played'' once and the Play Frequency is one. Likewise, if the sound recording is offered 10 times during the two-week reporting period, then it is ''played'' ten times and the Play Frequency is 10.

D. Required Data Fields for a Record of Use Under the Section 112 License

Section 112 of the Copyright Act contains a statutory license that permits services making digital audio transmissions to make ephemeral copies of sound recordings necessary to the transmission process. Some services operate under both section 114 and section 112 in transmitting sound recordings, while some do not make use of the section 114 licenses because their performances of sound recordings are exempted by the Copyright Act. See 17 U.S.C. 114(1)(C)(iv). These business establishment services, however, make ephemeral copies under the section 112 statutory license.

Section 112(e)(4) requires the Copyright Office to establish requirements by which copyright owners receive notice and records of use of the ephemeral copies of their sound recordings. The RIAA and SoundExchange, Inc. have requested that the Office require detailed records of each ephemeral copy of a sound recording made during the transmission of the performance. Comments of RIAA at 61–62 (submitted April 5, 2002); Comments of SoundExchange at Tab A, p. 11 (submitted September 30, 2002). Broadcasters counter that detailed reporting of the number of ephemeral copies made is unnecessary because of the direct link between the royalty fees paid by nonsubscription services for the section 114 license and the section 112 license; the ephemeral royalty rate for nonsubscription services is a percentage of the section 114 fee for performances. The number of ephemeral copies made is irrelevant because the value of those copies is tied to the value of the performance of the sound recording. Joint comments of Radio Broadcasters at 57–58 (submitted April 5, 2002). Furthermore, broadcasters assert that tracking the number of ephemeral copies made of a sound recording to facilitate its performance is a virtually impossible task and will result in a high error rate if reporting is required. *Id.* at 58.

It is reasonable to conclude that the value of a license to make ephemeral copies of a sound recording for the purpose of facilitating a transmission that results in a performance will depend upon the value of the performances of that sound recording. The Copyright Office is persuaded that records of performances of sound recordings are a sound proxy for the value of ephemeral copies made under the section 112 license. Our decision is bolstered by two factors. First, in the recent nonsubscription service CARP proceeding, RIAA advocated that the royalty fee for section 112 be a percentage of the section 114 fee, apparently recognizing the difficulty of assessing the independent value of ephemeral copies. RIAA's Proposed Findings of Fact and Conclusions of Law at ¶244 (submitted December 3, 2001). Second, while RIAA submits that SoundExchange may choose to distribute section 112 royalties on the basis of the number of copies, it may not do so. *See* 37 CFR 261.4(a) and (h).

For services that make transmissions under one or more of the section 114 licenses, there is no need to keep separate records for ephemeral copies made under section 112. Those services are required to submit only the single data file for performances of sound recordings and need not submit a second data file for ephemeral copies. However, even though the service is not required to report a separate data file, it must identify to the receiving and designated agents during each reporting period that it has made use of the section 112 license and that the data file it is submitting applies to both licenses.

For business establishment services that do not make use of the section 114 license but do make use of the section 112 license, performance data shall serve as the records of use for section 112. All the requirements prescribed by this regulation for the section 114 license records of use (data fields, formatting, delivery, etc.) apply to submission of section 112 records of use. Such services must identify to the receiving and designated agents for each reporting period that the data they are submitting is for the use of the section 112 license and not the section 114 license.

E. Sound Recordings Not Licensed Under Section 112/114

Many services, particularly those performing older works, transmit sound recordings that are not under federal copyright protection or whose term has expired. Also, many services may perform works that are in the public domain, or for which no copyright is claimed, or may directly license certain sound recordings from their owners. Services performing these works may report records of their usage but are not required to do so. Services are cautioned, however, that failure to report a sound recording which is under copyright protection may preclude reliance upon the section 114 and section 112 statutory licenses for the

performance and/or making of ephemeral copies of the work.

X. The Reporting Periods

As discussed above, the reporting requirements announced today are adopted on an interim basis while the Copyright Office continues the rulemaking process to produce final regulations. The interim regulations apply to performances on a prospective basis. It is anticipated that the Office will address the status of performances made prior to the effective date of these interim regulations at a later time. In the meantime, services should preserve those records of performances in their possession dating back to the effective date of the section 112 and 114 statutory licenses.

For the same reasons that the Office considers it advisable to phase in the reporting process, we have determined that, at this stage, it is best to require periodic reporting of sound recording performances rather than year-round census reporting. Once final regulations are implemented, year-round census reporting is likely to be the standard measure rather than the periodic reporting that will now be permitted on an interim basis.

For the period beginning with the effective date of this interim regulation until superseded by further regulations, services making use of the section 114 license (other than preexisting subscription services governed by 37 CFR 270.1, 270.2, and 270.4) and the section 112 license shall maintain records, as provided above, for each sound recording performed for a period of no less than two weeks (two periods of seven consecutive days) for each quarter of the calendar year.

The two weeks reported need not be consecutive, although a service may choose that option. Likewise, each week period need not begin on a Sunday, but may begin on any day of the week and then run for a total of seven consecutive days. The two weeks chosen for reporting should reflect as much as possible the programming typically offered by the service during the calendar quarter. Services that wish to report records of use for periods beyond the two weeks of each calendar quarter are encouraged to consult with SoundExchange on the feasibility of doing so and, if SoundExchange concurs, to report for longer periods of time.

The first reporting period shall begin on April 1, 2004,[20] which will mark the first period under these regulations that reports of use must be made. Reports of use thereafter will be due for each calendar quarter as described above until this interim regulation is superceded by final regulations.

A separate report of use is required for each calendar quarter for each statutory license used by the service.

XI. Notification of Use of the Statutory Licenses

The Copyright Office proposed in the NPRM certain amendments to the regulations contained in former 37 CFR 201.35 governing notice of use of statutory licenses. Unlike records of use, there is agreement on some of the proposed changes offered in the NPRM. Commenters agree that the Office should prescribe a single standard form for both the section 112 and 114 licenses and generally agree to the prototype form currently posted on the Copyright Office Web site at: *http://www.loc.gov/copyright/forms/form112-114nou.pdf. See, e.g.* Comments RIAA at 17–19 (submitted April 5, 2002); Joint Reply of Radio Broadcasters at 32–34 (submitted April 26, 2002). With respect to the form, RIAA requests that the services be identified in the exact manner in which they appear in the statute (*e.g.* ''Eligible non-subscription transmission service'' as opposed to ''Non-subscription transmission service''), whereas broadcasters request ''plain English'' descriptions of the various services identified in the form. Joint Reply of Radio Broadcasters at 33 (submitted April 26, 2002); Comments of Collegiate Broadcasters at 5–6 (submitted April 5, 2002). We are accepting RIAA's suggestion to conform the definitions. While broadcasters' suggestion for ''plain English'' sounds reasonable in theory, it is a considerable challenge to craft definitions that are sufficiently colloquial to satisfy the goal of ''plain English,'' yet remain technically accurate. Unfortunately, broadcasters did not provide any language for the Office to consider, and we therefore are not adopting their suggestion.

Commenters also agree that new notices of intent to use the licenses should be filed to update information from previously submitted notices and that notices should be maintained in a public file at the Copyright Office. Broadcasters, however, request that if new notices are required to be filed, the $20 filing fee be waived for those who have previously submitted notices and paid the fee. Joint Reply of Radio Broadcasters at 32 (submitted April 26, 2002); Comments of Collegiate Broadcasters at 7 (submitted April 5, 2002). The Copyright Office must recoup its costs for administering the section 112 and 114 statutory licenses; therefore it cannot waive the fee. Moreover, the $20 fee is not unreasonable or unduly burdensome. Part of the cost associated with the licenses is maintaining the public files for the notices and the Office shall continue that practice. Unfortunately, the Office is not prepared at this time to accept the submission of notices and fees electronically, and for the time being we will continue our practice of accepting only hard copies of notices and payment. It is anticipated that this may change in the future, and services using the section 112 and 114 licenses are encouraged to check the Office Web site for updates on this matter.

The Office stated in the NPRM that it was considering discontinuing its practice of posting copies of all notices on its Web site and requiring that notices be filed jointly with, or in the alternative only with, the collectives designated through the CARP process to receive and distribute royalties under the section 112 and 114 licenses. RIAA opposes elimination of the practice of posting notices on the Office Web site, arguing that the notices should be available to all copyright owners and not just those in the Washington, DC, area. Comments of RIAA at 20–21 (submitted April 5, 2002). The Office will post a list of names of those persons and entities that have filed a notice, but we will not continue to post the notices themselves. Scanning and posting the full notices is extremely costly and burdensome. When we institute our electronic filing system, we will revisit the issue. In the meantime, persons interested in viewing the notices must contact the Copyright Office.

None of the commenters favor submission of notices to the royalty collectives designated by the CARP process, either solely or jointly. See, *e.g.* Comments of the RIAA at 22–23 (submitted April 5, 2002); Joint Reply of Radio Broadcasters at 33 (submitted April 26, 2002). Consequently, the Office will not adopt such a requirement.

Updated notices, along with the $20 filing fee specified in § 201.3(e) of title 37 of the Code of Federal Regulations, shall be filed with the Licensing Division of the Copyright Office no later than July 1, 2004. The Office stated in the NPRM that it was considering requiring periodic updating of notices, perhaps on an annual basis. We are declining at this time to adopt a regular

[20] This does not mean that services will be required to keep records commencing April 1. Rather, April 1 is the beginning of the first three-month calendar quarter during which services must keep records for two weeks.

specified time period, preferring to gain experience in determining whether mandatory periodic updates by all services are necessary. The matter will be further addressed in the final regulations.

Notices of intent to use the section 112 and/or 114 licenses by new subscription services will still be required to be filed prior to the date of first transmission or the making of an ephemeral recording, and services will continue to be required to update the notice within 45 days of change in the information reported. Notices for new subscription services must be submitted to the Licensing Division of the Copyright Office accompanied by the filing fee specified in 37 CFR 201.3(e).

List of Subjects in 37 CFR Parts 201 and 270

Copyright, Sound recordings.

Interim Regulation

■ In consideration of the foregoing, the Copyright Office amends part 201 of 37 CFR and adds part 270 to 37 CFR to read as follows:

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

PART 201—GENERAL PROVISIONS

§§ 201.35 through 201.37 [Removed and Reserved]

■ 2. Remove and reserve §§ 201.35 through 201.37.

■ 3. Add part 270 to 37 CFR Chapter II, subchapter B, to read as follows:

PART 270—NOTICE AND RECORDKEEPING REQUIREMENTS FOR STATUTORY LICENSES

Sec.

270.1 Notice of use of sound recordings under statutory license.
270.2 Reports of use of sound recordings under statutory license for preexisting subscription services.
270.3 Reports of use of sound recordings under statutory license for nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services and business establishment services.
270.4 Designated collection and distribution organizations for records of use of sound recordings under statutory license.

Authority: 17 U.S.C. 702.

§ 270.1 Notice of use of sound recordings under statutory license.

(a) *General.* This section prescribes rules under which copyright owners shall receive notice of use of their sound recordings when used under either section 112(e) or 114(d)(2) of title 17, United States Code, or both.

(b) *Definitions.* (1) A *Notice of Use of Sound Recordings under Statutory License* is a written notice to sound recording copyright owners of the use of their works under section 112(e) or 114(d)(2) of title 17, United States Code, or both, and is required under this section to be filed by a Service in the Copyright Office.

(2) A *Service* is an entity engaged in either the digital transmission of sound recordings pursuant to section 114(d)(2) of title 17 of the United States Code or making ephemeral phonorecords of sound recordings pursuant to section 112(e) of title 17 of the United States Code or both. For purposes of this section, the definition of a Service includes an entity that transmits an AM/FM broadcast signal over a digital communications network such as the Internet, regardless of whether the transmission is made by the broadcaster that originates the AM/FM signal or by a third party, provided that such transmission meets the applicable requirements of the statutory license set forth in 17 U.S.C. 114(d)(2). A Service may be further characterized as either a preexisting subscription service, preexisting satellite digital audio radio service, nonsubscription transmission service, new subscription service, business establishment service or a combination of those:

(i) A *preexisting subscription service* is a service that performs sound recordings by means of noninteractive audio-only subscription digital audio transmissions, and was in existence and making such transmissions to the public for a fee on or before July 31, 1998, and may include a limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service.

(ii) A *preexisting satellite digital audio radio service* is a subscription satellite digital audio radio service provided pursuant to a satellite digital audio radio service license issued by the Federal Communications Commission on or before July 31, 1998, and any renewal of such license to the extent of the scope of the original license, and may include a limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service.

(iii) A *nonsubscription transmission service* is a service that makes noninteractive nonsubscription digital audio transmissions that are not exempt under section 114(d)(1) of title 17 of the United States Code and are made as part of a service that provides audio programming consisting, in whole or in part, of performances of sound recordings, including transmissions of broadcast transmissions, if the primary purpose of the service is to provide to the public such audio or other entertainment programming, and the primary purpose of the service is not to sell, advertise, or promote particular products or services other than sound recordings, live concerts, or other music-related events.

(iv) A *new subscription service* is a service that performs sound recordings by means of noninteractive subscription digital audio transmissions and that is not a preexisting subscription service or a preexisting satellite digital audio radio service.

(v) A *business establishment service* is a service that makes ephemeral phonorecords of sound recordings pursuant to section 112(e) of title 17 of the United States Code and is exempt under section 114(d)(1)(C)(iv) of title 17 of the United States Code.

(c) *Forms and content.* A Notice of Use of Sound Recordings Under Statutory License shall be prepared on a form that may be obtained from the Copyright Office website or from the Licensing Division, and shall include the following information:

(1) The full legal name of the Service that is either commencing digital transmissions of sound recordings or making ephemeral phonorecords of sound recordings under statutory license or doing both.

(2) The full address, including a specific number and street name or rural route, of the place of business of the Service. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location.

(3) The telephone number and facsimile number of the Service.

(4) Information on how to gain access to the online website or homepage of the Service, or where information may be posted under this section concerning the use of sound recordings under statutory license.

(5) Identification of each license under which the Service intends to operate, including identification of each of the following categories under which the Service will be making digital transmissions of sound recordings: preexisting subscription service, preexisting satellite digital audio radio service, nonsubscription transmission service, new subscription service or business establishment service.

(6) The date or expected date of the initial digital transmission of a sound recording to be made under the section 114 statutory license and/or the date or the expected date of the initial use of the section 112(e) license for the purpose of making ephemeral phonorecords of the sound recordings.

(7) Identification of any amendments required by paragraph (f) of this section.

(d) *Signature.* The Notice shall include the signature of the appropriate officer or representative of the Service that is either transmitting the sound recordings or making ephemeral phonorecords of sound recordings under statutory license or doing both. The signature shall be accompanied by the printed or typewritten name and the title of the person signing the Notice and by the date of the signature.

(e) *Filing notices; fees.* The original and three copies shall be filed with the Licensing Division of the Copyright Office and shall be accompanied by the filing fee set forth in § 201.3(c) of this chapter. Notices shall be placed in the public records of the Licensing Division. The address of the Licensing Division is: Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, SE, Washington, DC 20557–6400.

(1) A Service that, prior to April 12, 2004, has already commenced making digital transmissions of sound recordings pursuant to section 114(d)(2) of title 17 of the United States Code or making ephemeral phonorecords of sound recordings pursuant to section 112(e) of title 17 of the United States Code, or both, and that has already filed an Initial Notice of Digital Transmission of Sound Recordings Under Statutory License, and that intends to continue to make digital transmissions or ephemeral phonorecords following July 1, 2004, shall file a Notice of Use of Sound Recordings under Statutory License with the Licensing Division of the Copyright Office no later than July 1, 2004.

(2) A Service that, on or after July 1, 2004, commences making digital transmissions and ephemeral phonorecords of sound recordings under statutory license shall file a Notice of Use of Sound Recordings under Statutory License with the Licensing Division of the Copyright Office prior to the making of the first ephemeral phonorecord of the sound recording and prior to the first igital transmission of the sound recording.

(3) A Service that, on or after July 1, 2004, commences making only ephemeral phonorecords of sound recordings, shall file a Notice of Use of Sound Recordings under Statutory License with the Licensing Division of the Copyright Office prior to the making of the first ephemeral phonorecord of a sound recording under the statutory license.

(f) *Amendment.* A Service shall file a new Notice of Use of Sound Recordings under Statutory License within 45 days after any of the information contained in the Notice on file has changed, and shall indicate in the space provided by the Copyright Office that the Notice is an amended filing. The Licensing Division shall retain copies of all prior Notices filed by the Service.

§ 270.2 Reports of use of sound recordings under statutory license for preexisting subscription services.

(a) *General.* This section prescribes rules under which preexisting subscription services shall serve copyright owners with notice of use of their sound recordings, what the content of that notice should be, and under which records of such use shall be kept and made available.

(b) *Definitions.* (1) A *Collective* is a collection and distribution organization that is designated under the statutory license, either by settlement agreement reached under section 114(f)(1)(A) or section 114(f)(1)(C)(i) of title 17 of the United States Code and adopted pursuant to 37 CFR 251.63(b), or by decision of a Copyright Arbitration Royalty Panel (CARP) under section 114(f)(1)(B) or section 114(f)(1)(C)(ii), or by an order of the Librarian pursuant to 17 U.S.C. 802(f).

(2) A *Report of Use of Sound Recordings under Statutory License* is a report required under this part to be provided by the preexisting subscription service transmitting sound recordings under statutory license.

(3) A *Preexisting Subscription Service* is an entity engaged in the digital transmission of sound recordings pursuant to section 114(f) of title 17 of the United States Code.

(c) *Service.* Reports of Use shall be served upon Collectives that are identified in the records of the Licensing Division of the Copyright Office as having been designated under the statutory license, either by settlement agreement reached under section 114(f)(1)(A) or section 114(f)(1)(C)(i) and adopted pursuant to 37 CFR 251.63(b), or by decision of a Copyright Arbitration Royalty Panel (CARP) under section 114(f)(1)(B) or section 114(f)(1)(C)(ii), or by an order of the Librarian pursuant to 17 U.S.C. 802(f). Reports of Use shall be served, by certified or registered mail, or by other means if agreed upon by the respective preexisting subscription service and Collective, on or before the twentieth day after the close of each month.

(d) *Posting.* In the event that no Collective is designated under the statutory license, or if all designated Collectives have terminated collection and distribution operations, a preexisting subscription service transmitting sound recordings under statutory license shall post and make available online its Reports of Use. Preexisting subscription services shall post their Reports of Use online on or before the 20th day after the close of each month, and make them available to all sound recording copyright owners for a period of 90 days. Preexisting subscription services may require use of passwords for access to posted Reports of Use, but must make passwords available in a timely manner and free of charge or other restrictions. Preexisting subscription services may predicate provision of a password upon:

(1) Information relating to identity, location and status as a sound recording copyright owner; and

(2) A ''click-wrap'' agreement not to use information in the Report of Use for purposes other than royalty collection, royalty distribution, and determining compliance with statutory license requirements, without the express consent of the preexisting subscription service providing the Report of Use.

(e) *Content.* A ''Report of Use of Sound Recordings under Statutory License'' shall be identified as such by prominent caption or heading, and shall include a preexisting subscription service's ''Intended Playlists'' for each channel and each day of the reported month.

(1) The ''Intended Playlists'' shall include a consecutive listing of every recording scheduled to be transmitted, and shall contain the following information in the following order:

(i) The name of the preexisting subscription service or entity;

(ii) The channel;

(iii) The sound recording title;

(iv) The featured recording artist, group, or orchestra;

(v) The retail album title (or, in the case of compilation albums created for commercial purposes, the name of the retail album identified by the preexisting subscription service for purchase of the sound recording);

(vi) The recording label;

(vii) The catalog number;

(viii) The International Standard Recording Code (ISRC) embedded in the sound recording, where available and feasible;

(ix) The date of transmission; and

(x) The time of transmission.

(2) The Report of Use shall include a report of any system failure resulting in

a deviation from the Intended Playlists of scheduled sound recordings. Such report shall include the date, time and duration of any such system failure.

(f) *Signature.* Reports of Use shall include a signed statement by the appropriate officer or representative of the preexisting subscription service attesting, under penalty of perjury, that the information contained in the Report is believed to be accurate and is maintained by the preexisting subscription service in its ordinary course of business. The signature shall be accompanied by the printed or typewritten name and title of the person signing the Report, and by the date of signature.

(g) *Format.* Reports of Use should be provided on a standard machine-readable medium, such as diskette, optical disc, or magneto-optical disc, and should conform as closely as possible to the following specifications:

(1) ASCII delimited format, using pipe characters as delimiter, with no headers or footers;

(2) Carats should surround strings;

(3) No carats should surround dates and numbers;

(4) Dates should be indicated by: MM/DD/YYYY;

(5) Times should be based on a 24-hour clock: HH:MM:SS;

(6) A carriage return should be at the end of each line; and

(7) All data for one record should be on a single line.

(h) *Confidentiality.* Copyright owners, their agents and Collectives shall not disseminate information in the Reports of Use to any persons not entitled to it, nor utilize the information for purposes other than royalty collection and distribution, and determining compliance with statutory license requirements, without express consent of the preexisting subscription service providing the Report of Use.

(i) *Documentation.* All compulsory licensees shall, for a period of at least three years from the date of service or posting of the Report of Use, keep and retain a copy of the Report of Use. For reporting periods from February 1, 1996, through August 31, 1998, the preexisting subscription service shall serve upon all designated Collectives and retain for a period of three years from the date of transmission records of use indicating which sound recordings were performed and the number of times each recording was performed, but is not required to produce full Reports of Use or Intended Playlists for those periods.

§ 270.3 Reports of use of sound recordings under statutory license for nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services and business establishment services.

(a) *General.* This section prescribes rules under which nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services, and business establishment services shall maintain reports of use of their sound recordings under section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both.

(b) *Definitions.* (1) *Aggregate Tuning Hours* are the total hours of programming that a nonsubscription transmission service, preexisting satellite digital audio radio service, new subscription service or business establishment service has transmitted during the reporting period identified in paragraph (c)(3) of this section to all listeners within the United States over the relevant channels or stations, and from any archived programs, that provide audio programming consisting, in whole or in part, of eligible nonsubscription service, preexisting satellite digital audio radio service, new subscription service or business establishment service transmissions, less the actual running time of any sound recordings for which the service has obtained direct licenses apart from 17 U.S.C. 114(d)(2) or which do not require a license under United States copyright law. For example, if a nonsubscription transmission service transmitted one hour of programming to 10 simultaneous listeners, the nonsubscription transmission service's Aggregate Tuning Hours would equal 10. If 3 minutes of that hour consisted of transmission of a directly licensed recording, the nonsubscription transmission service's Aggregate Tuning Hours would equal 9 hours and 30 minutes. If one listener listened to the transmission of a nonsubscription transmission service for 10 hours (and none of the recordings transmitted during that time was directly licensed), the nonsubscription transmission service's Aggregate Tuning Hours would equal 10.

(2) An *AM/FM Webcast* is a transmission made by an entity that transmits an AM/FM broadcast signal over a digital communications network such as the Internet, regardless of whether the transmission is made by the broadcaster that originates the AM/FM signal or by a third party, provided that such transmission meets the applicable requirements of the statutory license set forth in 17 U.S.C. 114(d)(2).

(3) A *Collective* is a collection and distribution organization that is designated under one or both of the statutory licenses, either by settlement agreement reached under section 112(e)(3), section 112(e)(6), section 114(f)(1)(A), section 114(f)(1)(C)(i), section 114(f)(2)(A), or section 114(f)(2)(C)(i) and adopted pursuant to § 251.63(b) of this chapter, or by a decision of a Copyright Arbitration Royalty Panel under section 112(e)(4), section 112(e)(6), section 114(f)(1)(B), section (f)(1)(C)(ii), section 114(f)(2)(B), or section 114(f)(2)(C)(ii) or by order of the Librarian of Congress pursuant to 17 U.S.C. 802(f).

(4) A *new subscription service* is defined in § 270.1(b)(2)(iv).

(5) A *nonsubscription transmission service* is defined in § 270.1(b)(2)(iii).

(6) A *preexisting satellite digital audio radio service* is defined in § 270.1(b)(2)(ii).

(7) A *business establishment service* is defined in § 270.1(b)(2)(v).

(8) A *performance* is each instance in which any portion of a sound recording is publicly performed to a Listener by means of a digital audio transmission or retransmission (*e.g.*, the delivery of any portion of a single track from a compact disc to one Listener) but excluding the following:

(i) A performance of a sound recording that does not require a license (*e.g.*, the sound recording is not copyrighted);

(ii) A performance of a sound recording for which the service has previously obtained a license from the Copyright Owner of such sound recording; and

(iii) An incidental performance that both:

(A) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events and

(B) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

(9) *Play frequency* is the number of times a sound recording is publicly performed by a Service during the relevant period, without respect to the number of listeners receiving the sound

recording. If a particular sound recording is transmitted to listeners on a particular channel or program only once during the two-week reporting period, then the play frequency is one. If the sound recording is transmitted 10 times during the two-week reporting period, then the play frequency is 10.

(10) A *Report of Use* is a report required under this section to be provided by a nonsubscription transmission service and new subscription service that is transmitting sound recordings pursuant to the statutory license set forth in section 114(d)(2) of title 17 of the United States Code or making ephemeral phonorecords of sound recordings pursuant to the statutory license set forth in section 112(e) of title 17 of the United States Code, or both.

(c) *Report of Use.* (1) *Separate reports not required.* A nonsubscription transmission service, preexisting satellite digital audio radio service or a new subscription service that transmits sound recordings pursuant to the statutory license set forth in section 114(d)(2) of title 17 of the United States Code and makes ephemeral phonorecords of sound recordings pursuant to the statutory license set forth in section 112(e) of title 17 of the United States Code need not maintain a separate Report of Use for each statutory license during the relevant reporting periods.

(2) *Content.* For a nonsubscription transmission service, preexisting satellite digital audio radio service, new subscription service or business establishment service that transmits sound recordings pursuant to the statutory license set forth in section 114(d)(2) of title 17 of the United States Code, or the statutory license set forth in section 112(e) of title 17 of the United States Code, or both, each Report of Use shall contain the following information, in the following order, for each sound recording transmitted during the reporting periods identified in paragraph (c)(3) of this section:

(i) The name of the nonsubscription transmission service, preexisting satellite digital audio radio service, new subscription service or business establishment service making the transmissions, including the name of the entity filing the Report of Use, if different;

(ii) The category transmission code for the category of transmission operated by the nonsubscription transmission service, preexisting satellite digital audio radio service, new subscription service or business establishment service:

(A) For eligible nonsubscription transmissions other than broadcast simulcasts and transmissions of non-music programming;

(B) For eligible nonsubscription transmissions of broadcast simulcast programming not reasonably classified as news, talk, sports or business programming;

(C) For eligible nonsubscription transmissions of non-music programming reasonably classified as news, talk, sports or business programming;

(D) For eligible nonsubscription transmissions by a non-Corporation for Public Broadcasting noncommercial broadcaster making transmissions covered by §§ 261.3(a)(2)(i) and (ii) of this chapter;

(E) For eligible nonsubscription transmissions by a non-Corporation for Public Broadcasting noncommercial broadcaster making transmissions covered by § 261.3(a)(2)(iii) of this chapter;

(F) For eligible nonsubscription transmissions by a small webcaster operating under an agreement published in the **Federal Register** pursuant to the Small Webcaster Settlement Act;

(G) For eligible nonsubscription transmissions by a noncommercial broadcaster operating under an agreement published in the **Federal Register** pursuant to the Small Webcaster Settlement Act;

(H) For transmissions other than broadcast simulcasts and transmissions of non-music programming made by an eligible new subscription service;

(I) For transmissions of broadcast simulcast programming not reasonably classified as news, talk, sports or business programming made by an eligible new subscription service;

(J) For transmissions of non-music programming reasonably classified as news, talk, sports or business programming made by an eligible new subscription service; and

(K) For eligible transmissions by a business establishment service making ephemeral recordings;

(iii) The featured artist;

(iv) The sound recording title;

(v) The International Standard Recording Code (ISRC) or, alternatively to the ISRC, the

(A) Album title; and

(B) Marketing label;

(vi) The actual total performances of the sound recording during the reporting period or, alternatively, the

(A) Aggregate Tuning Hours;

(B) Channel or program name; and

(C) Play frequency.

(3) *Reporting period.* A Report of Use shall be prepared for a two-week period (two periods of 7 consecutive days) for each calendar quarter of the year. The two weeks need not be consecutive, but both weeks must be completely within the calendar quarter.

(4) *Signature.* Reports of Use shall include a signed statement by the appropriate officer or representative of the service attesting, under penalty of perjury, that the information contained in the Report is believed to be accurate and is maintained by the service in its ordinary course of business. The signature shall be accompanied by the printed or typewritten name and the title of the person signing the Report, and by the date of the signature.

(5) *Confidentiality.* Copyright owners, their agents and Collectives shall not disseminate information in the Reports of Use to any persons not entitled to it, nor utilize the information for purposes other than royalty collection and distribution, without consent of the service providing the Report of Use.

(6) *Documentation.* A Service shall, for a period of at least three years from the date of service or posting of a Report of Use, keep and retain a copy of the Report of Use.

§ 270.4 Designated collection and distribution organizations for records of use of sound recordings under statutory license.

(a) *General.* This section prescribes rules under which records of use shall be collected and distributed under section 114(f) of title 17 of the United States Code, and under which records of such use shall be kept and made available.

(b) *Definitions.* (1) A *Collective* is a collection and distribution organization that is designated under the statutory license, either by settlement agreement reached under section 114(f)(1)(A) or section 114(f)(1)(C)(i) and adopted pursuant to 37 CFR 251.63(b), or by decision of a Copyright Arbitration Royalty Panel (CARP) under section 114(f)(1)(B) or section 114(f)(1)(C)(ii), or by an order of the Librarian pursuant to 17 U.S.C. 802(f).

(2) A *Service* is an entity engaged in the digital transmission of sound recordings pursuant to section 114(f) of title 17 of the United States Code.

(c) *Notice of Designation as Collective under Statutory License.* A Collective shall file with the Licensing Division of the Copyright Office and post and make available online a ''Notice of Designation as Collective under Statutory License,'' which shall be identified as such by prominent caption or heading, and shall contain the following information:

(1) The Collective name, address, telephone number and facsimile number;

(2) A statement that the Collective has been designated for collection and distribution of performance royalties under statutory license for digital transmission of sound recordings; and

(3) Information on how to gain access to the online website or home page of the Collective, where information may be posted under this part concerning the use of sound recordings under statutory license. The address of the Licensing Division is: Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, SE., Washington, DC 20557–6400.

(d) *Annual Report.* The Collective will post and make available online, for the duration of one year, an Annual Report on how the Collective operates, how royalties are collected and distributed, and what the Collective spent that fiscal year on administrative expenses.

(e) *Inspection of Reports of Use by copyright owners.* The Collective shall make copies of the Reports of Use for the preceding three years available for inspection by any sound recording copyright owner, without charge, during normal office hours upon reasonable notice. The Collective shall predicate inspection of Reports of Use upon information relating to identity, location and status as a sound recording copyright owner, and the copyright owner's written agreement not to utilize the information for purposes other than royalty collection and distribution, and determining compliance with statutory license requirements, without express consent of the Service providing the Report of Use. The Collective shall render its best efforts to locate copyright owners in order to make available records of use, and such efforts shall include searches in Copyright Office public records and published directories of sound recording copyright owners.

(f) *Confidentiality.* Copyright owners, their agents, and Collectives shall not disseminate information in the Reports of Use to any persons not entitled to it, nor utilize the information for purposes other than royalty collection and distribution, and determining compliance with statutory license requirements, without express consent of the Service providing the Report of Use.

(g) *Termination and dissolution.* If a Collective terminates its collection and distribution operations prior to the close of its term of designation, the Collective shall notify the Copyright Office, and all Services transmitting sound recordings under statutory license, by certified or registered mail. The dissolving Collective shall provide each such Service with information identifying the copyright owners it has served.

Dated: February 26, 2004.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 04–5404 Filed 3–10–04; 8:45 am]

BILLING CODE 1410–33–U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AL40

Eligibility for an Appropriate Government Marker for a Grave Already Marked at Private Expense

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document affirms, without any changes, the provisions of the interim final rule that was published to reflect changes made by the Veterans Education and Benefits Expansion Act of 2001 (Pub. L. 107–103) and the Veterans Benefits Act of 2002 (Pub. L. 107–330).

This final rule establishes provisions pursuant to the Veterans Education and Benefits Expansion Act of 2001 to allow the Department of Veterans Affairs (VA) to furnish an appropriate Government marker for the grave of an eligible veteran buried in a private cemetery, regardless of whether the grave is already marked with a privately purchased marker. Pursuant to the Veterans Benefits Act of 2002, the provisions of this final rule will apply to requests to mark graves or memorialize eligible veterans whose deaths occurred on or after September 11, 2001.

DATES: *Effective Date:* This final rule is effective September 25, 2003.

Applicability Date: The provisions of 38 CFR 1.631 apply to deaths occurring on or after September 11, 2001.

FOR FURTHER INFORMATION CONTACT: David K. Schettler, Director of Memorial Programs Service (MPS), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Telephone: (202) 501–3100 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On September 25, 2003, VA published an interim final rule in the **Federal Register** (68 FR 55317). The interim final rule amended VA's burial benefits provisions to allow VA to furnish an appropriate marker for the graves of eligible veterans buried in private cemeteries, regardless of whether the grave is already marked with a privately purchased marker.

We provided a 60-day comment period that ended November 24, 2003. We did not receive any comments. Based on the rationale set forth in the interim final rule and in this document, we adopt the provisions of the interim final rule as a final rule without any changes.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

Paperwork Reduction Act

This document does not contain new provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). The Office of Management and Budget has approved the existing information collection under control number 2900–0222.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Only individual VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program number for this document is 64.202.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Cemeteries, Veterans.

Approved: February 25, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

PART 1—[AMENDED]

■ Accordingly, the interim final rule amending 38 CFR part 1 that was

published in the **Federal Register** at 68 FR 55317 on September 25, 2003, is adopted as a final rule without change.

[FR Doc. 04–5410 Filed 3–10–04; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Refund Procedures for Metered Postage

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule revises the *Domestic Mail Manual* (DMM™) to allow refunds for unused, undated metered postage. This mailing standard will benefit any mailer who generates significant quantities of unused, undated metered postage and is able to meet the refund criteria. This final rule also implements minor clarifications to the procedures for requesting refunds for unused, dated metered postage. The final rule also includes the terms under which a contract postal unit (CPU) will be eligible for refunds for its unused printed postage.

DATES: This revision is effective March 4, 2004.

FOR FURTHER INFORMATION CONTACT: Chuck Tricamo at (212) 613–8754, New York Rates and Classification Service Center, United States Postal Service®.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the **Federal Register** on October 29, 2003 (68 FR 61647–61650). Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invited public comments on the following proposed amendments to the *Domestic Mail Manual,* incorporated by reference in the Code of Federal Regulations. *See* 39 CFR part 111. Comments were due by November 28, 2003.

Discussion of Comments

The Postal Service received six comments in reference to this proposed DMM revision. Three of the commenters were mailing houses, two were commercial mail customers, and one was from a retail mail customer.

One commercial mail customer and one mailing house concurred with the proposed revision since it reduced their risk of losing the amount paid for undated metered postage while enhancing their flexibility in choosing when the mail is deposited.

Two mailing houses and one commercial mail customer commented on the effort required to segregate mailpieces in a refund request by meter license numbers and to submit a separate PS Form 3533, *Application and Voucher for Refund of Postage, Fees, and Services,* for each meter. The commercial customer also asked why this was a new regulation for refunds for unused, dated metered postage refunds.

The Postal Service understands the mailers' concerns; however, segregating the unused, metered mail by meter, with a separate PS Form 3533 for each meter for which a refund is requested, is not a new requirement. No change to the proposed rule was made as a result of this comment.

One commercial customer questioned whether the minimum piece/postage minimum requirement for refunds for undated metered mail applies to dated meter postage refunds. The proposed rule included no change to the current mailing standards for refunds for dated metered mail. There is no minimum requirement for dated meter postage refunds. No change to the proposed rule was made as a result of this comment.

One retail mail customer referred to mistakes made when applying dates on metered postage. The proposed rule made no changes to the procedures for handling refunds for dated metered postage.

■ For the reasons stated in the preamble, the *Domestic Mail Manual* is revised as follows. The changes are incorporated by reference in the Code of Federal Regulations. *See* 39 *CFR* part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001, 3011, 3201, 3219, 3403–3406, 3621, 3626, 5001.

■ 2. Revise *Domestic Mail Manual* (DMM) as set forth below:

Domestic Mail Manual (DMM)

* * * * *

P Postage and Payment Methods

P000 Basic Information

P010 General Standards

* * * * *

P014 Refunds and Exchanges

* * * * *

2.0 Postage and Fees Refunds

2.1 Refund Standards

A refund for postage and fees may be made:

* * * * *

[Add new item e to read as follows:]

e. Under the terms of a contract between the contract postal unit (CPU) and the USPS® for unused postage printed by the CPU.

* * * * *

[Delete 2.5 and 2.6. Renumber current 2.7 through 2.12 as new 2.5 through 2.10, respectively.]

* * * * *

2.7 Applying for Refund

[Revise text of renumbered 2.7 to read as follows:]

For refunds under 2.0, the customer must apply for a refund on Form 3533; submit it to the postmaster; and provide the envelope, wrapper, or a part of it showing the names and addresses of the sender and addressee, canceled postage and postal markings, or other evidence of postage and fees paid. Refunds for metered postage are submitted under 3.0.

2.8 Ruling on Refund Request

[Revise text of renumbered 2.8 to read as follows:]

Refund requests are decided based on the specific type of postage or mailing:

a. Refunds under 2.0. The local postmaster grants or denies refunds under 2.0. The customer may appeal an adverse ruling through the postmaster to the rates and classification service center (RCSC) manager who issues the final agency decision.

b. Dated metered postage, except for PC Postage® systems, under 3.0. The postmaster at the licensing Post Office™ grants or denies requests for refunds for dated metered postage under 3.0. The licensee may appeal an adverse ruling within 30 days through the manager, Postage Technology Management, USPS Headquarters (see G043 for address), who issues the final agency decision. The original meter indicia must be submitted with the appeal.

c. Undated metered postage under 3.0. The manager, business mail entry (MBME), at the district Post Office overseeing the mailer's licensing Post Office, or designee authorized in writing, grants or denies requests for refunds for undated metered postage under 3.0. The customer may appeal a decision on undated metered postage within 30 days through the MBME, or designee, to the RCSC manager who issues the final agency decision. The

original meter indicia must be submitted with the appeal.

d. PC Postage systems under 3.0. The system provider grants or denies a request for a refund for dated indicia printed by PC Postage systems under 3.0 using established USPS criteria. For dated PC Postage indicia only, the licensee may appeal an adverse ruling within 30 days through the manager, Postage Technology Management, USPS Headquarters, who issues the final agency decision. The original indicia must be submitted with the appeal.

e. Optional procedure (OP) mailings. Mailer's request for a refund must be submitted to the manager, Business Mailers Support (BMS), USPS Headquarters (*see* G043 for address).

* * * * *

3.0 Refund Request for Postage Evidencing Systems and Metered Postage

* * * * *

[Revise title and text of 3.2 to read as follows:]

3.2 Unused, Dated Postage Evidencing System Indicia, Except for PC Postage Indicia

Unused, dated postage meter indicia are considered for refund only if complete, legible, and valid. PC Postage indicia refunds are processed under 3.3. All other metered postage refund requests must be submitted as follows:

a. The licensee must submit the request. The refund request must include proof that the person or entity requesting the refund is the licensee for the postage meter that printed the indicia. Acceptable proof includes a copy of the lease, rental agreement, or contract.

b. The licensee must submit the request, along with the items bearing the unused postage, to the licensing Post Office. The items must be sorted by meter used and then by postage value shown in the indicia, and must be properly faced and packaged in groups of 100 identical items when quantities allow. The request is processed by the USPS. The postmaster approves or denies the refund request.

c. The licensee must submit the refund request within 60 days of the date(s) shown in the indicia.

d. When the unused metered postage is affixed to a mailpiece, the refund request must be submitted with the entire envelope or wrapper. The unused metered postage must not be removed from the mailpiece once applied.

e. Indicia printed on labels or tapes not stuck to wrappers or envelopes must be submitted loose and must not be stapled together or attached to any paper or other medium. However, self-adhesive labels printed without a backing may be submitted on a plain sheet of paper.

f. If a part of one indicium is printed on one envelope or card and the remaining part on one or more others, the envelopes or cards must be fastened together to show that they represent one indicium.

g. Refunds are allowable for indicia on metered reply envelopes only when it is obvious that an incorrect amount of postage was printed on them.

h. The refund request must be submitted with a properly completed Form 3533 (*see* I021). A separate Form 3533 must be completed for each meter for which a refund is requested. All identifying information and all sections related to the refund requested must be completed. Charges for processing a refund request for unused, dated meter indicia are as follows:

(1) If the total face value of the indicia is $350 or less, the amount refunded is 90% of the face value. USPS may process the refund payment locally via a no-fee postal money order.

(2) If the total face value is more than $350, the amount refunded is reduced by a figure representing $35 per hour, or fraction thereof, for the actual hours to process the refund, with a minimum charge of $35. The postmaster will submit the approved Form 3533 to the USPS Imaging and Scanning Center for payment processing through the Accounting Service Center.

[Renumber current 3.3 and 3.4 as new 3.5 and 3.6, respectively. Add new 3.3 and 3.4 to read as follows:]

3.3 Unused, Dated PC Postage Indicia

Unused, dated PC Postage indicia are considered for refund only if complete, legible, and valid. The refund request must be submitted as follows:

a. Only the PC Postage licensee may request the refund. The licensee must submit the request, along with the items bearing the unused postage, to the system provider. The request is processed by the provider, not the USPS.

b. The licensee must submit the refund request within 30 days of the date(s) shown in the indicia.

c. The refund request must be submitted as required by 3.2.d through 3.2.g.

d. The provider may, at its discretion, charge for processing a refund request.

3.4 Undated Metered Postage

Unused, undated postage evidencing system indicia are considered for refund only if complete, legible, and valid. The refund request must be submitted as follows:

a. Only the meter licensee or the commercial entity that prepared the mailing for the licensee using the licensee's meter may request the refund. The request must include a letter signed by the meter licensee or the commercial entity that prepared the mailing for the licensee explaining why the mailpieces were not mailed.

b. The minimum quantity of unused, undated metered postage that may be submitted for refund is 500 pieces from a single mailing or, as an alternative, indicia with a total postage value of at least $500 from a single mailing.

c. The meter licensee, or the commercial entity that prepared the mailing for the licensee using the licensee's meter, must submit the request, along with the items bearing the unused postage and the required documentation, to the manager, business mail entry, at the district Post Office overseeing the mailer's licensing Post Office, or to a designee authorized in writing. The manager or designee approves or denies the refund request.

d. The request must include the items bearing the unused postage, sorted by meter used and then by postage value shown in the indicia. The items must be properly faced and packaged in groups of 100 identical items, when quantities allow, and must meet the requirements of 3.2.d through 3.2.g.

e. The request must be submitted within 60 days of the date the mail was metered. Supporting documentation must be submitted to validate the date. Examples of supporting documentation include the job order from the customer, production records, the USPS qualification report, spoilage report, and reorders created report, as well as customer billing records, postage statements, and a sample mailpiece.

f. The refund request must be submitted with a properly completed Form 3533 (*see* I021). All identifying information and all sections related to the refund requested must be completed. When more than one meter was used to prepare the mailing, a separate Form 3533 must be completed for each.

(1) If the total face value of the indicia for a single mailing submitted for refund is $350 or less, the amount refunded is 90% of the face value. USPS may process the refund payment locally via a no-fee postal money order.

(2) If the total face value of the indicia for a single mailing submitted for refund is more than $350, the amount refunded is reduced by a figure representing $35 per hour, or fraction thereof, for the actual hours to process the refund, with

a minimum charge of $35. The MBME will submit the approved Form 3533 to the USPS Imaging and Scanning Center for payment processing through the Accounting Service Center.

3.5 Ineligible Metered Postage Items

The following metered postage items are ineligible for refunds:

* * * * *

[Revise text of renumbered item d to read as follows:]

d. Indicia lacking identification of the licensing Post Office, or other required information.

* * * * *

We will publish an appropriate amendment to 39 CFR 111 to reflect these changes.

Neva Watson,

Attorney, Legislative.

[FR Doc. 04–5567 Filed 3–10–04; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

Alternative Addressing Formats

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule revises *Domestic Mail Manual* (DMM™) A020 to standardize when alternative addressing formats may be used and to clarify the differences between the various formats. In addition, postage payment options for use on mailpieces with simplified addresses are specified, prohibiting the use of uncanceled stamps, to enable efficient handling and processing of this mail. Corresponding sections of DMM E050 and F010 also are revised.

EFFECTIVE DATE: April 1, 2004.

FOR FURTHER INFORMATION CONTACT: Bill Chatfield, *William.A.Chatfield@usps.gov* or 703–292–3964.

SUPPLEMENTARY INFORMATION: In a proposed rule published in the **Federal Register** on May 30, 2003 (68 FR 32448–32450), the Postal Service presented for public comment revised DMM language that would clarify the mailing standards defining the use of alternative addressing formats. Three types of alternative addressing formats may be used in lieu of the typical addressing format (*i.e.*, addressee name, address, city, state, and ZIP Code). These alternative addressing formats include a simplified address format (such as ''Postal Customer'') with no actual delivery address, an occupant address format with a generic customer reference and a specific delivery address, and an exceptional address format with traditional addressing elements and a current resident alternative to provide for delivery to the address even if the specific addressee is no longer at the address.

Restrictions on the type of mail for which these formats may be used were more stringent for the exceptional address format than for the simplified or occupant address formats, although the same complications (such as accountable mail being addressed to a generic addressee) could arise for mail addressed using any of the three alternative addressing formats.

New section A020.1.0 is added to the DMM to standardize the types of mail that may be mailed with any alternative addressing format. A020.1.2 extends the current prohibitions for combining exceptional address mail with certain categories of mail and services to all types of alternatively addressed mail. Since each type of alternative address provides for a nonspecific addressee name, the same restrictions currently placed only on mail with the exceptional address format are extended to any mail with an alternative address format.

A020.1.3 explains treatment of all undeliverable mail having alternative addresses. A qualifying phrase (''related solely to the address'') is added after ''undeliverable for another reason,'' since there are reasons indicated in Exhibit F010.4.1 that have to do with the name (*e.g.*, ''Attempted-Not Known'' and ''Deceased'') that are not valid reasons to return this type of mail. A020.1.3 expands the treatment of undeliverable mail to include undeliverable mail with any alternative address format.

A020.2.1 explains the use of the term ''Rural Route Boxholder'' as compared with ''Postal Customer''.

Under A020.2.4, regarding postage payment, the rewording prohibits the use of uncanceled stamps on simplified address mail. Cancellation would require taking apart the packaging and repackaging the mail, which is inefficient.

DMM F010.4.0 and 5.0 amend the limitations on using mail with alternative address formats as noted in A020.1.2.

Comments

The Postal Service received one comment to its proposed rule. The commenter was a newspaper publisher who wanted to verify that simplified addresses were still allowed on saturation mail to rural route addresses. This is affirmed.

For the reasons presented in the proposed rule and those noted above, the Postal Service adopts the following changes to the *Domestic Mail Manual,* which is incorporated by reference in the *Code of Federal Regulations. See* 39 CFR 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Amend the following sections of the *Domestic Mail Manual* as set forth below:

Domestic Mail Manual (DMM)

A—ADDRESSING

A000 Basic Addressing

* * * * *

A020 Alternative Addressing Formats

Summary

[Revise text to read as follows:]

A020 specifies the conditions for use and treatment of mail bearing alternative addressing formats. These formats are the simplified address format (*i.e.*, ''Postal Customer'' in lieu of specific name and address); the occupant address format (*i.e.*, ''Occupant'' in lieu of specific name, followed by specific address); and the exceptional address format (*i.e.*, ''Jane Doe or Current Occupant,'' followed by specific address).

[Renumber current 1.0 through 3.0 as new 2.0 through 4.0. Add new 1.0 to read as follows:]

1.0 General Use and Treatment

1.1 Use

Alternative addressing formats may be used as described in 2.0 through 4.0.

1.2 Prohibited Use

Alternative addressing formats may not be used on:

a. Express Mail® pieces.

b. Mail with any special service under S900.

c. Mail with any ancillary service endorsement under F010.

d. Periodicals intended to count as subscriber or requester copies to meet the applicable circulation standards.

e. Mail addressed to an overseas military post office under A010.6.0.

1.3 Treatment

Mail with an occupant or an exceptional address format is delivered as addressed and is not forwarded. Such mail is treated as undeliverable only when the address is incorrect or incomplete or when the mail cannot be delivered for another reason related solely to the address (*e.g.*, a vacant building), as shown in Exhibit F010.4.1. Periodicals publishers are notified only when mailpieces with the occupant or exceptional address formats are undeliverable for solely address-related reasons. Mail with a simplified address format is distributed to all deliveries on a route or to Post Office boxholders. Undeliverable mail with any alternative addressing format is disposed of as waste under F010.8.1.

2.0 Simplified Address

2.1 Use-Rural and Highway Contract Routes, PO Boxholders

[Revise text of renumbered 2.1 to read as follows:]

The simplified address format (*i.e.*, ''Postal Customer'') may be used on mail only when complete distribution (except as provided for congressional mail under E050) is made to each family or boxholder on a rural or highway contract route at any Post Office and/or to all Post Office boxholders at a Post Office without city carrier service. The Post Office name and state may be added after the simplified address. The word ''Local,'' instead of the Post Office name and state, is optional. Also, a more specific address may be used, such as the following options:

a. ''Rural Route Boxholder'' for mail intended to all boxholders on a rural route.

b. ''Highway Contract Route Boxholder'' for mail intended to all boxholders on a highway contract route.

c. ''Post Office Boxholder'' for mail intended to all Post Office boxholders.

2.2 Use—City Routes, P.O. Boxholders

[Revise introductory text of renumbered 2.2 to read as follows:]

When distribution is to be made to each active possible delivery on city carrier routes or to each Post Office boxholder at a Post Office with city carrier service, the addressee's name; mailing address; and city, state, and ZIP Code may be omitted from the address only on pieces mailed as official matter by agencies of the federal government (including mail with the congressional frank prepared under E050); any state, county, or municipal government; and the governments of the District of Columbia, the Commonwealth of Puerto Rico, and any U.S. territory or possession listed in G010. The requirement for distribution to each stop or Post Office boxholder may be modified for congressional mail under E050. The following also applies:

* * * * *

2.4 Postage

[Revise text of renumbered 2.4 to read as follows:]

Postage must be paid with permit imprint, meter indicia, precanceled stamps, or other authorized methods not requiring cancellation, according to the standards for the class of mail.

* * * * *

[Delete renumbered 2.6, 3.2, 4.2, and 4.4. Renumber current 4.3 as new 4.2.]

* * * * *

E ELIGIBILITY

E000 Special Eligibility Standards

* * * * *

E050 Official Mail (Franked)

* * * * *

2.0 Addressing

* * * * *

2.2 Alternative Addressing

[Revise text of 2.2 to read as follows:]

Mail sent under the franking privilege of a member of or member-elect to Congress or a delegate, delegate-elect, resident commissioner, or resident commissioner-elect to the U.S. House of Representatives may be addressed under the alternative addressing formats in 2.0 through 4.0 for delivery to customers within the congressional district, state, or area that he or she represents. A member of the House of Representatives may not, under the franking privilege, use the alternative addressing formats to send mail outside the congressional district that he or she represents. Any representative at large may send franked mail with the simplified address format to Postal Service customers within the entire state that he or she represents.

* * * * *

2.4. Delivery

[Revise text of 2.4 to read as follows:]

Mail with a simplified address format is delivered within the district, state, or area to any of the following:

a. Each boxholder or family on a rural or highway contract route.

b. Each Post Office boxholder.

c. Each active possible delivery on city carrier routes.

d. For deliveries under 2.4a and 2.4c, partial distribution of simplified address mailings is permitted only when the carrier's delivery territory crosses congressional district boundaries. In these cases, complete distribution is made to the portion of the route within a single congressional district.

* * * * *

F FORWARDING AND RELATED SERVICES

F000 Basic Services

F010 Basic Information

* * * * *

4.0 Basic Treatment

* * * * *

Exhibit 4.1 USPS Endorsements for Mail Undeliverable as Addressed

* * * * *

[Revise the footnote to read as follows:]

*Alternative addressing formats may not be used on the following: Express Mail pieces; mail with any special service; mail sent with any ancillary service endorsement; or mail sent to any overseas military post office. When an alternative addressing format is used on Periodicals pieces, the publisher is notified of nondelivery only for those reasons marked with an asterisk (*).

* * * * *

5.0 Class Treatment for Ancillary Services

5.1 First-Class Mail and Priority Mail

* * * * *

[Revise item b to read as follows:]

b. Alternative addressing formats under A020 may not be used on mail with any ancillary service endorsement or mail with any special service. Forwarding service is not provided for such mail. Undeliverable First-Class Mail® pieces with any alternative addressing format are returned with the reason for nondelivery attached only if the address is incorrect or incomplete or the mail is undeliverable for another reason as shown in Exhibit 4.1.

* * * * *

5.2 Periodicals

* * * * *

[Revise item b to read as follows:]

b. Publications with an alternative addressing format under A020 are delivered to the address when possible. Forwarding service is not provided for such mail. Periodicals publishers are notified only when mailpieces with the occupant or exceptional address formats are undeliverable for solely address-related reasons.

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 04–5566 Filed 3–10–04; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 241

Discontinuance of Post Offices

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations for the establishment, classification, and discontinuance of Post Offices™.

DATES: The rule is effective March 11, 2004.

FOR FURTHER INFORMATION CONTACT: Fred Hintenach, manager of Customer Service Operations, at (202) 268–5045, or by fax at (202) 268–5102.

SUPPLEMENTARY INFORMATION: The United States Postal Service® is publishing amendments to 39 CFR Part 241.3, specifically related to the discontinuance of Post Offices to incorporate regulation changes concerning ZIP Code™ retention at discontinued offices, as well as the approval authority related to final actions on discontinuances.

List of Subjects in 39 CFR Part 241

Postal Service.

PART 241—ESTABLISHMENT CLARIFICATION AND DISCONTINUANCE

■ 1. The authority citation for 39 CFR Part 241 continues to read as follows:

Authority: 39 U.S.C. 401, 404.

§ 241.3 [Amended]

■ 2. Section 241.3 is amended by revising paragraphs (b)(2) introductory text and (b)(2)(i), (d)(4) introductory text, (e)(2)(ii)(A), (f)(1), (f)(2) introductory text, (f)(3) through (f)(5), (g)(1)(i), (g)(2), (g)(3)(i), (g)(3)(ii) introductory text, and (g)(4)(ii) to read as follows:

§ 241.3 Discontinuance of post offices.

* * * * *

(b) * * *

* * * * *

(2) *ZIP Code assignment.* The ZIP Code for each address formerly served from the discontinued post office should be kept, wherever practical. In some cases, the ZIP Code originally assigned to the discontinued post office may be changed if the responsible district manager, Customer Service and Sales, submits a request with justification to his or her vice president, Area Operations, before the proposal to discontinue the post office is posted.

(i) In a consolidation, the ZIP Code for the replacement community post office, station, or branch is the ZIP Code originally assigned to the discontinued post office.

* * * * *

(d) * * *

(4) *Record.* The district manager, Customer Service and Sales, must keep as part of the record for his or her consideration and for review by the vice president, Delivery and Retail, all the documentation gathered about the proposed change.

* * * * *

(e) * * *

(2) * * *

(ii) * * *

(A) Forward the revised proposal and the entire record to the vice president, Delivery and Retail.

* * * * *

(f) * * *

(1) *In general.* The vice president, Delivery and Retail, or a designee must review the proposal of the district manager, Customer Service and Sales. This review and the decision on the proposal must be based on and supported by the record developed by the district manager, Customer Service and Sales. The vice president, Delivery and Retail, can instruct the district manager to provide more information to supplement the record. Each instruction and the response must be added to the record. The decision on the proposal of the district manager, which must also be added to the record, may approve or disapprove the proposal, or return it for further action as set forth in this paragraph (f).

(2) *Approval.* The vice president, Delivery and Retail or a designee may approve the proposal of the district manager, Customer Service and Sales, with or without further revisions. If approved, the term ''Final Determination'' is substituted for ''Proposal'' in the title. A copy of the Final Determination must be provided to the district manager. The Final Determination constitutes the Postal Service determination for the purposes of 39 U.S.C. 404(b). The Final Determination must include the following notices:

* * * * *

(3) *Disapproval.* The vice president, Delivery and Retail, or a designee may disapprove the proposal of the district manager, Customer Service and Sales, and return it and the record to the manager with written reasons for disapproval. The manager must post a notice in each affected post office that the proposed closing or consolidation has been determined to be unwarranted.

(4) *Return for further action.* The vice president, Delivery and Retail, or a designee may return the proposal of the district manager, Customer Service and Sales, with written instructions to give additional consideration to matters in the record, or to obtain additional information. Such instructions must be placed in the record.

(5) *Public file.* Copies of each Final Determination and each disapproval of a proposal by the vice president, Delivery and Retail, must be placed on file in the Postal Service Headquarters library.

(g) * * *

(1) * * *

(i) Provide notice of the Final Determination by posting a copy prominently in the affected post office or offices. The date of posting must be noted on the first page of the posted copy as follows: ''Date of posting:'' The district manager, Customer Service and Sales, must notify the vice president, Delivery and Retail, of the date of posting.

* * * * *

(2) *Implementation of determinations not appealed.* If no appeal is filed pursuant to 39 U.S.C. 404(b)(5), the official closing date of the office must be published in the *Postal Bulletin,* effective the first Saturday 90 days after the Final Determination was posted. A district manager, Customer Service and Sales, may request a different date for official discontinuance in the Post Office Change Announcement document submitted to the vice president, Delivery and Retail. However, the post office may not be discontinued sooner than 60 days after the posting of the notice required by paragraph (g)(1) of this section.

(3) * * * (i) *Implementation of discontinuance.* If an appeal is filed, only the vice president, Delivery and Retail, may direct a discontinuance before disposition of the appeal. However, the post office may not be discontinued sooner than 60 days after the posting of notice required by paragraph (g)(1) of this section.

(ii) *Display of appeal documents.* Legal Policy and Ratemaking Law, Postal Service General Counsel, must provide the district manager, Customer Service and Sales, with copies of all pleadings, notices, orders, briefs, and opinions filed in the appeal proceeding.

* * * * *

(4) * * *

(ii) *Determination returned for further consideration.* If the Commission returns the matter for further consideration, the vice president, Delivery and Retail, must direct that either:

(A) Notice be provided under paragraph (f)(3) of this section that the

proposed discontinuance is determined not to be warranted or

(B) The matter be returned to an appropriate stage under this section for further consideration following such instructions as the vice president, Delivery and Retail, may provide.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 04–5402 Filed 3–10–04; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region 2 Docket No. PR11–267c; FRL–7634–2]

Approval and Promulgation of State Plans for Designated Facilities; Puerto Rico

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the ''State Plan'' submitted by the Commonwealth of Puerto Rico to fulfill the requirements of sections 111(d)/129 of the Clean Air Act for Commercial and Industrial Solid Waste Incineration (CISWI) units. Puerto Rico's State Plan provides for the implementation and enforcement of the Emissions Guidelines, as promulgated by EPA on December 1, 2000, applicable to existing CISWI units for which construction commenced on or before November 30, 1999. Specifically, the State Plan that EPA is approving today, establishes emission limits for organics, carbon monoxide, metals, acid gases and particulate matter and compliance schedules for the existing CISWI units located in the Commonwealth of Puerto Rico which will reduce the designated pollutants.

DATES: This rule is effective on April 12, 2004.

ADDRESSES: Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Environmental Protection Agency, Region 2, Caribbean Environmental Protection Division, Centro Europa Building, Suite 417, 1492 Ponce De Leon Avenue, Stop 22, San Juan, Puerto Rico 00907–4127.

Puerto Rico Environmental Quality Board, National Plaza Building, 431 Ponce De Leon Avenue, Hato Rey, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3381 or *Wieber.Kirk@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Sections 111(d) and 129 of the Clean Air Act (CAA) require states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources. However, section 129 of the CAA, also requires EPA to promulgate the EG for Commercial and Industrial Solid Waste Incineration (CISWI) units that emit a mixture of air pollutants. These pollutants include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity). On December 1, 2000 (65 FR 75338), EPA promulgated CISWI unit new source performance standards and the EG, 40 CFR part 60, subparts CCCC and DDDD, respectively. The designated facility to which the EG apply is each existing CISWI unit, as defined in subpart DDDD, that commenced construction on or before November 30, 1999.

Section 111(d) of the CAA requires that ''designated'' pollutants, regulated under standards of performance for new stationary sources by section 111(b) of the CAA, must also be controlled at existing sources in the same source category to a level stipulated in an EG document. Section 129 of the CAA specifically addresses solid waste combustion and emission controls based on what is commonly referred to as ''maximum achievable control technology'' (MACT). Section 129 requires EPA to promulgate a MACT based emission guidelines document for CISWI units, and then requires states to develop plans that implement the EG requirements. The CISWI EG under 40 CFR part 60, subpart DDDD, establishes emission and operating requirements under the authority of the CAA, sections 111(d) and 129. These requirements must be incorporated into a state plan that is ''at least as protective'' as the EG, and is Federally enforceable upon approval by EPA. The procedures for adoption and submittal of state plans are codified in 40 CFR part 60, subpart B.

II. Puerto Rico's Submittal

On May 20, 2003, the Puerto Rico Environmental Quality Board (PREQB) submitted to EPA a section 111(d)/129 plan to implement 40 CFR part 60 subpart DDDD—Emission Guidelines, for existing CISWI units located in the Commonwealth of Puerto Rico. PREQB's submittal included: enforceable mechanisms; the necessary legal authority; inventory of CISWI units; emissions inventory; enforceable compliance schedules; testing, monitoring, recordkeeping, and reporting requirements; record of public hearing; and a provision for annual state progress reports.

For a detailed description and full evaluation of the Puerto Rico CISWI plan that EPA is approving today, the reader is referred to the rulemaking actions (68 FR 62019 and 68 FR 62040) published in the **Federal Register** on October 31, 2003.

III. Comments in Response to EPA's Proposal

A. Background Information

On October 31, 2003, EPA announced, in proposed and direct final rules published in the **Federal Register** (68 FR 62019 and 68 FR 62040, respectively), approval of Puerto Rico's CISWI plan. On November 6, 2003, EPA received an adverse comment on the direct final rule. EPA had indicated in its October 31, 2003, direct final rule that if EPA received adverse comments, it would withdraw the direct final rule. Consequently, EPA informed the public, in a removal notice published in the **Federal Register** (69 FR 2304) on January 15, 2004, that EPA received an adverse comment and that the direct final rule was being removed. EPA did not receive any other comments. EPA is addressing the adverse comment in today's final rule based upon the proposed action published on October 31, 2003.

B. Comments Received and EPA's Response

EPA received one adverse comment on its August 11, 2003 direct final rule to approve Puerto Rico's CISWI plan

from a concerned citizen. That comment and EPA's response follows.

Comment: The PREQB is not effectively managing the air programs in the island. Permits are provided to facilities which do not comply with the regulations and new emission standards go unattended. Many facilities in Puerto Rico are currently discharging more than the amount of emissions permitted and on many occasions without a permit. Approving the CISWI plan will simply do nothing for the protection of human health or the environment of Puerto Rico.

Response: It should be noted that the commentor did not provide any documentation or justification in support of its allegations. In addition, the comment does not directly address Puerto Rico's CISWI plan, but rather addresses its permitting program. 40 CFR 60.26 requires that a section 111(d) plan demonstrate that the state has the necessary legal authority to adopt and implement the plan. In order to make this demonstration, the plan must show that the state has the legal authority to adopt emission standards and compliance schedules for the designated facilities; enforce the applicable laws, regulations, emission standards and compliance schedules, including the ability to obtain injunctive relief; the authority to obtain information from the designated facilities in order to determine compliance, including the authority to require recordkeeping from the facilities, to make inspections and to conduct tests at the facilities; the authority to require designated facilities to install, maintain and use emission monitoring devices; the authority to require periodic reporting to the state on the nature and amounts of emissions from the facility; and the authority for the state to make such emissions data available to the public. Puerto Rico has demonstrated all these elements exist within its enabling legislation and regulations to the extent that EPA has determined the Puerto Rico CISWI plan to be approvable.

In addition, upon the effective date of EPA's final approval of the Puerto Rico CISWI plan, the requirements of Puerto Rico's plan become federally enforceable. This enables EPA to take its own enforcement actions against facilities that may not comply with the approved CISWI requirements.

IV. Conclusion

EPA has evaluated the CISWI plan submitted by Puerto Rico for consistency with the CAA, EPA emission guidelines and policy. EPA has determined that Puerto Rico's Plan meets all requirements and, therefore, EPA is approving Puerto Rico's Plan to implement and enforce subpart DDDD, as promulgated on December 1, 2000, applicable to existing CISWI units that have commenced construction on or before November 30, 1999. EPA is also approving revisions to Rule 102 and Rule 405 of the Puerto Rico Regulations for the Control of Atmospheric Pollution, entitled, ''Definitions'' and ''Incineration'', respectively.

V. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Puerto Rico's State plan applies to all affected sources regardless of whether it has been identified in its plan. Therefore, EPA has concluded that this rulemaking action does not have federalism implications nor does it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). 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 CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 10, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Acid gases, Carbon monoxide, Commercial and industrial solid waste, Intergovernmental relations, Organics, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 27, 2004.

Kathleen C. Callahan,

Acting Regional Administrator, Region 2.

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

PART 62—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart BBB—Puerto Rico

■ 2. Subpart BBB is amended by adding a new undesignated center heading and § 62.13108 to read as follows:

Control of Air Emissions of Designated Pollutants From Existing Commercial and Industrial Solid Waste Incineration Units

§ 62.13108 Identification of plan.

(a) The Puerto Rico Environmental Quality Board submitted to the Environmental Protection Agency on May 20, 2003, a ''State Plan'' for implementation and enforcement of 40 CFR part 60, subpart DDDD, Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units. The State Plan includes revisions to Rule 102 and Rule 405 of the Puerto Rico Regulations for the Control of Atmospheric Pollution, entitled, ''Definitions'' and ''Incineration'', respectively. Revised Rules 102 and 405 were adopted on June 4, 2003 and effective on July 4, 2003.

(b) Identification of sources: The plan applies to all applicable existing Commercial and Industrial Solid Waste Incineration Units for which construction commenced on or before November 30, 1999.

[FR Doc. 04–5367 Filed 3–10–04; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–39

[FMR Amendment 2004–1; FMR Case 2003–102–2]

RIN 3090–AH92

Federal Management Regulation; Replacement of Personal Property Pursuant to the Exchange/Sale Authority

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) revised the Federal Property Management Regulations (FPMR) by moving coverage related to the sale of personal property to the Federal Management Regulation (FMR). Because of the transfer of this coverage as well as the codification of Title 40 of the United States Code into positive law, several cross-references are no longer valid in existing FMR parts. This final rule amends the FMR by updating certain cross-references in 41 CFR part 102–39 and providing the new statutory citations to Title 40 of the United States Code.

DATES: Effective Date: March 11, 2004.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Rick Bender, Office of Governmentwide Policy, Personal Property Management Policy, at (202) 501–3448. Please cite FMR case 2003–102–2, Amendment 2004–1.

SUPPLEMENTARY INFORMATION:

A. Background

GSA is in the process of revising the FPMR and transferring most of the content into a new, streamlined FMR. Several sections in FMR part 102–39 (41 CFR part 102–39) contain references to FPMR sections that no longer exist. This final rule amends the FMR by providing references to existing FMR sections concerning the sale of personal property.

B. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for comment. Therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

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

E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 102–39

Government property management.

Dated: January 23, 2004.

Stephen A. Perry,

Administrator of General Services.

■ For the reasons set forth in the preamble, GSA amends 41 CFR part 102–39 as set forth below:

PART 102–39—REPLACEMENT OF PERSONAL PROPERTY PURSUANT TO THE EXCHANGE/SALE AUTHORITY

■ 1. The authority citation for 41 CFR part 102–39 continues to read as follows:

Authority: 40 U.S.C. 503 and 121(c).

§ 102–39.10 [Amended]

■ 2. Amend § 102–39.10 by removing ''101–37'' from the last sentence and adding ''102–33'' in its place.

■ 3. Amend § 102–39.30 by revising the second sentence to read as follows:

§ 102–39.30 When should I not use the exchange/sale authority?

* * * You must either abandon or destroy such property, or declare the property excess, in accordance with part 102–36 of this chapter. * * *

§ 102–39.40 [Amended]

■ 4. Amend § 102–39.40 in the second sentence of paragraph (b) by removing ''§ 101–45.304–12'' and adding ''§ 102–38.125'' in its place.

§ 102–39.45 [Amended]

■ 5. Amend § 102–39.45 in paragraph (i) by removing ''§ 101-37.610'' and adding ''§ 102–33.370'' in its place.

■ 6. Amend § 102–39.65 in the introductory text of paragraph (a) by revising the first sentence; and in paragraph (b) by removing ''§ 101–45.304–2(b)'' and adding §§ 102–38.120 and 102–38.125'' in its place. The revised text reads as follows:

§ 102–39.65 What are the sales methods?

(a) You must use the methods, terms, and conditions of sale, and the forms prescribed in part 102–38 of this title, in the sale of property being replaced, except for the provisions of §§ 102–38.100 through 102–38.115 of this title regarding negotiated sales. * * *

* * * * *

[FR Doc. 04–5409 Filed 3–10–04; 8:45 am]

BILLING CODE 6820–14–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–97; RM–5598]

Radio Broadcasting Services; Laughlin, NV

AGENCY: Federal Communications Commission.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to Section 73.202(b), FM Table of Allotments, under Nevada for the community of Laughlin.

DATES: Effective March 11, 2004.

FOR FURTHER INFORMATION CONTACT: Victoria McCauley, Media Bureau (202) 418–2180.

SUPPLEMENTARY INFORMATION: In 1987, the Commission allotted Channel 300C1 to Laughlin, Nevada. *See* 52 FR 38766 (October 19, 1987). The channel is not currently listed in the FM Table of Allotments, Section 73.202(b) under Nevada for the community of Laughlin. Station KVGS(FM) obtained a license for this channel on May 13, 1992. *See* BLH–19910903KD. Station KVGS(FM) currently operates on Channel 300C at Laughlin, Nevada because the station was granted a license to specify operation on Channel 300C in lieu of Channel 300C1 at Laughlin, Nevada on June 20, 2001. *See* BLH–20010327ABN.

Need for Correction

The Code of Federal Regulations must be corrected to include Channel 300C at Laughlin, Nevada.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Accordingly, 47 CFR part 73 is corrected by making the following correcting amendment:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Channel 300C at Laughlin.

Dated: February 12, 2004.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–5416 Filed 3–10–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 031202301–4067–02; I.D.111403C]

RIN 0648–AR53

Taking of Threatened or Endangered Species Incidental to Commercial Fishing Operations

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

ACTION: Final rule.

SUMMARY: NMFS is issuing a final rule to prohibit shallow longline sets of the type normally targeting swordfish on the high seas in the Pacific Ocean east of 150° W. long. by vessels managed under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (FMP). This action is intended to protect endangered and threatened sea turtles from the adverse impacts of shallow longline fishing by U.S. longline fishing vessels in the Pacific Ocean and operating out of the west coast. This rule supplements the regulations that implement the FMP that prohibit shallow longline sets on the high seas in the Pacific Ocean west of 150° W. long. by vessels managed under that FMP. The FMP was partially approved by NMFS on February 4, 2004. Together, these two regulations are expected to conserve leatherback and loggerhead sea turtles as required under the Endangered Species Act (ESA).

DATES: This final rule is effective April 12, 2004.

ADDRESSES: Copies of the FMP, which includes an environmental impact statement (EIS) accompanied by a regulatory impact review (RIR) and an initial regulatory flexibility analysis (IRFA) are available on the internet at *http://www.pcouncil.org/hms/hmsfmp.html* or may be obtained from Daniel Waldeck, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon, 97220–1384, Daniel.Waldeck@noaa.gov, (503) 820–2280. This final rule corresponds to the High Seas Pelagic Longline Alternative 3 in the Council EIS, RIR, and IRFA. The final regulatory flexibility analysis (FRFA)is available on the internet at *http://swr.ucsd.edu/* or may be obtained from Tim Price, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, California, 90802–4213, *Tim.Price@noaa.gov*, (562) 980–4029.

FOR FURTHER INFORMATION CONTACT: Tim Price, NMFS, Southwest Region, Protected Resources Division, 562–980–4029.

SUPPLEMENTARY INFORMATION: Additional information about the status of sea turtles and the West Coast-based pelagic longline fishery can be found in the proposed rule published on December 17, 2003 (68 FR 70219). All species of sea turtles that are known to interact with U.S. longline vessels in the Pacific Ocean are listed as either endangered or threatened under the ESA. The incidental take of endangered species may be authorized only by an incidental take statement issued under section 7 of the ESA or an incidental take permit issued under section 10 of the ESA. The incidental take of threatened species may be authorized only by an incidental take statement in a biological opinion issued pursuant to section 7 of the ESA, an incidental take permit issued pursuant to section 10 of the ESA, or regulations under section 4(d) of the ESA.

A number of longline vessels targeting swordfish unload their catch and re-provision in California ports. Participants in the West Coast-based pelagic longline fishery often fish more than 1,000 nautical miles (1,900 km) offshore and are generally prohibited by state regulations from fishing within 200 nautical miles (370 km) of the West Coast. From October 2001 through January 31, 2004, 409 sets were observed on 20 trips, documenting a total of 46 sea turtle interactions, consisting of 3 leatherback sea turtles, 42 loggerhead sea turtles, and 1 olive ridley sea turtle. All of the observed sea turtles were released alive except two recent loggerhead sea turtles which were dead.

On October 31, 2003, the Pacific Fishery Management Council (Council) submitted the FMP to NMFS for review. The FMP includes management measures for the West Coast-based pelagic longline fishery that prohibits shallow longline sets of the type

normally used to target swordfish on the high seas in the Pacific Ocean west of 150° W. long. by vessels managed under the FMP. In addition, to conserve sea turtles, the FMP requires West Coast-based pelagic longline vessels to have on board and to use dip nets, line cutters, and wire or bolt cutters capable of cutting through the vessel's hooks to release sea turtles with the least harm possible to the sea turtles. On February 4, 2004, NMFS partially approved the FMP. NMFS disapproved the provision of the FMP that would allow West Coast-based pelagic longline vessels to make shallow sets east of the 150° W. Long.. The disapproval of that provision was based, in part, on the biological opinion, dated February 4, 2004, which concluded that allowing shallow set fishing east of 150° W. Long. and north of the equator (0°) was likely to jeopardize loggerhead sea turtles.

Response to Comments

NMFS published a proposed rule on December 17, 2003 (68 FR 70219). NMFS received 127 comments on the proposed rule. There were 124 comments in support of the proposed rule and 3 comments opposed. Most of the comments received in favor of the proposed rule were emails sent by fax containing identical or similar language. NMFS reviewed and considered all comments received in the development of this rule.

Comment 1: Longline vessels departing from California and targeting swordfish on the high seas are not a problem for sea turtles because the fishery is very small, consisting of less than 25 vessels and the fishermen attach their hooks to leaders that are longer than the float lines which allow sea turtles to reach the surface when they are hooked. Moreover, there have been no observed sea turtle mortalities aboard longline vessels departing from California and targeting swordfish on the high seas.

Response: Recent observer data indicate that there were two incidental mortalities of loggerhead sea turtles during a fishing trip which departed from California in which the gear consisted of longer leaders than float lines. These data indicate that mortalities do occur on sets in which the leaders are longer than the ball drop. Although there may only be a few active West Coast-based longline vessels, NMFS estimates that if one million hooks are set by the fleet, there may be 23 to 57 leatherback, 126 to 195 loggerhead, and 1 to 11 olive ridley sea turtles captured incidentally.

Comment 2: If longline vessels departing from California are prohibited from making shallow sets and targeting swordfish, the foreign, unregulated, fleet will shift fishing effort to the waters vacated by the U.S. fleet. The shift in effort to foreign fleets may result in more sea turtles interactions and mortality, causing more harm to sea turtle populations.

Response: Although there is a possibility that fishing effort may shift to foreign nations, at this time, there are no data to support this claim. Moreover, there are no data that show that longline fishing by foreign vessels have higher sea turtle interaction rates.

Comment 3: One commenter indicated that a prohibition on shallow sets was not necessary because West Coast-based longline vessel operators minimize their impact to sea turtles by bringing aboard any hooked sea turtles using a dip net and removing the hook before the animal is released alive back into the ocean. In addition, ARC dehookers for deep hooked turtles are being placed aboard all longline boats fishing out of California.

Response: NMFS agrees that use of a dip net to bring a hooked sea turtle aboard a vessel and removing the hook increases the likelihood of its survival when the animal is released. Under the FMP, vessel operators would be required to comply with sea turtle handling, resuscitation, and release requirements, which include the use of dip nets and the removal of hooks. NMFS considered these factors as part of the proposed action in the ESA section 7 consultation and determined that sea turtle handling, alone, would not obviate the need to prohibit fishing shallow sets.

Comment 4: Regardless of whether a sea turtle has deeply ingested a hook or has been lightly hooked, there does not appear to be any difference in their behavior based on animals that were released alive with satellite transmitter tags.

Response: More recent analyses of satellite telemetry data from transmitters deployed by NMFS' observers were completed to derive survival and hazard functions (transmitted tag defects, battery failure, transmitter detachment, turtle death) for lightly- and deeply-hooked loggerheads by modeling time-to-failure of all transmitters using nonparametric statistical modeling. Based on these analyses, the data indicate that there are significant differences between the survival functions for lightly- and deeply-hooked loggerheads within 90 days after release but no difference between survival functions after this time.

Comment 5: One commenter cited the March 2003 National Geographic magazine which states that 35,000 turtles are illegally killed each year in northwestern Mexico. The commenter felt that when compared to the apparent illegal harvest in Mexico, the longline fishery fishing out of California is not hurting the sea turtle population.

Response: NMFS recognizes that other human activities and natural phenomena pose a serious threat to the survival and recovery of threatened and endangered species. We recognize that we will not be able to recover threatened and endangered species without addressing the full range of human activities and natural phenomena that have caused these species to decline or could cause these species to become extinct in the foreseeable future. Recovering threatened and endangered sea turtles, as with other imperilled marine species, will require an international, cooperative effort that addresses the full suite of threats to those species. Nevertheless, NMFS' task is to identify the direct and indirect effects of the FMP fisheries to determine if the proposed management regime is likely to contribute to the endangerment of threatened and endangered species by appreciably reducing their likelihood of both surviving and recovering in the wild. NMFS considered the direct harvest of sea turtles in Mexico as part of the environmental baseline of the biological opinion and concluded that the FMP fishery will jeopardize the continued existence of loggerhead sea turtles.

Comment 6: California longliners have been working on implementing a sea turtle recovery program in Mexico. If the longline fishery is closed, the California longliners will likely end their current effort to fund sea turtle restoration projects in Baja, Mexico.

Response: NMFS commends the efforts of the West Coast-based longliners to implement a sea turtle recovery program in Mexico. However, NMFS is required to analyze the effects of the West Coast-based longline fishery on listed species and cannot rely upon the potential benefits that are not immediately realized from conservation efforts such as nesting beach protection and educational programs.

Comment 7: Prohibiting swordfish fishing will severely impact the annual income of the longline fishermen off the California coast.

Response: According to the analyses submitted by the Council, average annual profits of the West Coast-based longline fishery targeting swordfish is estimated at $6.7 million. Assuming all the vessels ceased fishing, this would be the economic loss to the fishery. NMFS

recognizes that there will be economic consequences to the regulated industry. However, many of the longline vessels have historically fished under the Western Pacific Pelagic fishery management plan's limited entry permit and would likely to return to Hawaii to target tuna or target swordfish under the proposed management plan submitted by the Western Pacific Council.

Comment 8: NMFS cannot propose to implement a prohibition on shallow longline sets for swordfish on the high seas in the Pacific Ocean east of the 150° West Longitude because the Council rejected this alternative citing insufficient evidence to justify a prohibition.

Response: Under the Magnuson-Stevens Fishery Conservation and Management Act, NMFS may disapprove or partially approve a plan if the plan is not consistent with any applicable law. Based on the ESA section 7 consultation, NMFS concluded that the FMP as proposed by the Council was likely to jeopardize the continued existence of loggerhead sea turtles. Based on that analysis, NMFS partially disapproved the Council's plan. NMFS is now implementing this final rule pursuant to its authority under the ESA.

Comment 9: NMFS cannot rely on either the 2001 or 2002 biological opinions on the Western Pacific Pelagics Fishery Management Plan because of the order issued by the United States District Court for the District of Columbia states that NMFS cannot validly rely on either opinion in assisting the effects of a fishery on listed species or elaborating appropriate management measures.

Response: NMFS consulted separately on the FMP and concluded in its Febrary 4, 2004, biological opinion that the FMP without this regulation would likely jeopardize loggerhead sea turtles. The Court vacated the November 2002 biological opinion on the Western Pacific Pelagics Fishery Management Plan because NMFS had not treated the plaintiffs (Hawaii Longline Association) as applicants in preparation of the March 2001 biological opinion, and this procedural error affected the preparation of the November 2002 biological opinion. The Court chose not to evaluate or rule on whether the data, analysis and conclusions in those opinions were correct.

Comment 10: NMFS cannot issue an anticipatory regulatory proposal such as proposing to prohibit swordfish sets because this raises ''the specter of a foregone conclusion'' which is impermissable under the ESA.

Response: NMFS is authorized to promulgate regulations as may be appropriate to enforce provisions of the ESA. NMFS is promulgating this rule after the biological opinion concluded that the FMP was likely to jeopardize loggerhead sea turtles without this rule.

Comment 11: Data used to assess the impacts of the West Coast-based longline fishery are not sufficient to make a decision to prohibit shallow sets targeting swordfish.

Response: At the time the Council made its recommendation, there were sufficient data to determine that the fishery was taking numerous sea turtles incidental to fishing operations. In addition, the Council was aware that NMFS had significant concerns about the number of sea turtles that were expected to be captured incidentally to the continued operation of the West Coast-based pelagic longline fishery based on the severe decline and lack of recovery in loggerhead and leatherback sea turtles populations, and the extensive analyses conducted by the agency on existing threats to these populations.

Comment 12: Similarities between the West Coast-based and the Hawaii-based pelagic longline fisheries suggest that there should be similar regulatory measures to manage the two fisheries. As a result, NMFS should propose regulations similar to the emergency regulations proposed by the Western Pacific Fishery Management Council that would allow swordfish fishing at 75 percent of historic levels and the use of circle hooks with mackerel bait in place of J hooks baited with squid for the West Coast-based longline vessels.

Response: The Council is responsible for providing management and conservation recommendations that address concerns about the effect of the FMP prosecuted off the U.S. West Coast and on ocean resources caught incidentally. NMFS anticipates that the Council will consider alternative management measures similar to those proposed by the Western Pacific Council using the framework procedures in the HMS FMP. NMFS will consider any such proposals that the Council submits which might lessen the burden to fishermen while maintaining adequate protection of sea turtles. NMFS will fully support the Council in examination and selection of appropriate protective measures.

Comment 13: One commenter questioned whether the post-hooking mortality estimates used to estimate the level of impacts by the fishery are consistent with the best scientific and commercial data available as required by the ESA. In addition, the commenter requested that NMFS use the results from the post-hooking mortality workshop scheduled to convene in January.

Response: On January 15–16, 2004, a workshop on marine turtle longline post-interaction mortality was convened. Seventeen experts in the area of biology, anatomy/physiology, veterinary medicine, satellite telemetry and longline gear deployment participated in the workshop. Consideration of the workshop discussion, along with a comprehensive review of all of the information available on the issue has led to the modification of the February 2001 criteria. The February 2001 injury categories have been expanded to better describe the specific nature of the interaction. The February 2001 criteria described two categories for mouth hooking: (1) Hook does not penetrate internal mouth structure; and (2) mouth hooked (penetrates) or ingested hook. The new criteria divides the mouth hooking event into three components to reflect the severity of the injury and to account for the probable improvement in survivorship resulting from removal of gear, where appropriate, for each injury. The three components consist of: (1) hooked in esophagus at or below the heart (insertion point of the hook is not visible when viewed through the open mouth; (2) hooked in cervical esophagus, glottis, jaw joint, soft palate, or adnexa (insertion point of the hook is visible when viewed through the open mouth); and (3) hooked in lower jaw (not adnexa). The new criteria, also, separates external hooking from mouth hooking, eliminates the ''no injury'' category, and adds a new category for comatose/resuscitated sea turtles. NMFS has used these new criteria in the analyses to evaluate the effects of the West Coast-based longline fishery on listed sea turtle populations.

Comment 14: One commenter proposed that NMFS implement a single regulation to manage longline fishing in the Pacific Ocean under section 11(f) of the ESA, rather than the Magnuson-Stevens Fishery Conservation and Management Act, that would prohibit U.S. flagged vessels from engaging in shallow set swordfish style longline fishing anywhere in the Pacific, and likewise would prohibit the landing of any longline caught swordfish in any U.S. port in the Pacific.

Response: Congress passed the Magnuson-Stevens Fishery Conservation and Management Act as the primary mechanism for managing fisheries of the United States. The regional fishery management councils are to exercise sound judgment in the

stewardship of fishery resources through the preparation, monitoring, and revision of such plans under circumstances which will enable the States, the fishing industry, consumer and environmental organizations and other interested persons to participate in, and advise on, the establishment and administration of such plans. Clearly, Congress envisioned the Magnuson-Stevens Fishery Conservation and Management Act as the tool for NMFS to use to manage fisheries. However, where the Council process fails to address the mandates of the ESA, NMFS can excercise its authority under the ESA. Further, the Western Pacific Fisheries Management Council has proposed a regulation that would allow swordfish fishing but with modified gear that should reduce interactions.

Comment 15: One commenter believes that the proposed rule should be further modified to prohibit all pelagic longlining, regardless of whether it targets tuna or swordfish, because pelagic longline fishing has not demonstrated an elimination of all mortality to leatherback sea turtles. An alternative to completely banning longline gear would be to implement a time and area closure that is 100 percent effective at eliminating leatherback sea turtle mortality.

Response: Based on the analyses in the biological opinion evaluating the effects of the FMP on listed species, including the leatherback sea turtle, NMFS concluded that longline fishing targeting tuna east of the 150° W. long. would not jeopardize the continued existence of leatherback sea turtles. As a result, NMFS has determined that a complete ban on all longline fishing east of the 150° W. long. is not warranted.

Comment 16: Unless gear modifications can eliminate the mortality of leatherback sea turtles, a reduction of 60 percent, 70 percent, or even 90 percent is not sufficient.

Response: Under the ESA, NMFS is mandated to insure that any action authorized, funded, or carried out by an agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species. After completing the section 7 consultation, NMFS concludes that some leatherback mortality will not jeopardize the continued existence of the species.

Comment 17: NMFS should close the West Coast-based longline fishery immediately via the immediate promulgation of an emergency regulation rather than through an extended notice and comment rulemaking process.

Response: NMFS undertook what it determined to be the preferable method of ensuring the fishery is managed in a manner that avoids the likelihood of jeopardizing the continued existence of Pacific sea turtle populations while providing due process.

Comment 18: Many commmenters urged NMFS to take a more proactive role in promoting international agreements that would close these waters to vessels from other countries that may be catching and killing leatherback and other sea turtles while fishing for swordfish.

Response: NMFS is dedicated to protecting and preserving living marine resources and their habitat through scientific research, management, enforcement, and international agreements. Recently, NMFS partnered with the Inter-American Tropical Tuna Commission to conduct training workshops for sea turtle bycatch reduction, attended by over 800 fishermen throughout Ecuador. The agency will participate in similar workshops in Costa Rica this spring. In addition, NMFS continues to promote international collaboration and outreach efforts to share research information on possible new conservation measures for sea turtles. These are all very important issues for NMFS.

West Coast-based Fishing Effort

At the time when NMFS issued the proposed rule, preliminary data suggested that the West Coast-based longline fishing fleet would set approximately 1.55 million hooks each calendar year. To evaluate whether this preliminary estimate in the FMP EIS was the best available information, NMFS reviewed and analyzed the HSFCA logbook data to determine the number of active vessels and the number of reported sets and hooks. Comparing these data with the NMFS observer program data and records, NMFS determined that the preliminary estimates were too high. As a result, NMFS corrected the information about the number of active vessels during calendar years 2002 and 2003, and decreased the estimated number of expected fishing effort to one million hooks.

Estimated Sea Turtle Take Levels

There are two sets of data from which rates of sea turtle interactions in the West Coast-based pelagic longline fishery could be derived: (1) Data from observers on Hawaii-based longline vessels operating in the same areas as the West Coast-based pelagic longline vessels; and (2) data from observers on West Coast-based pelagic longline vessels. Vessels in the West Coast-based pelagic longline fishery fish in the same manner, and frequently in the same area, as vessels that had been targeting swordfish in the Hawaii-based longline fishery. Because of the strong similarities between these two fisheries and the limited amount of observer data available for the West Coast-based pelagic longline fleet alone, NMFS concluded that using the combined observer data from the Hawaii-based and West Coast-based longline fleets for fishing east of 150° W. long. is more representative of the sea turtle interaction rates that can be expected to occur throughout the West Coast-based pelagic longline fishery.

Using the combined observer data, NMFS developed estimates of sea turtle take levels that would result from the West Coast-based pelagic longline fishery. NMFS assumed that the West Coast-based pelagic longline fleet deploys one million hooks east of 150° W. long., NMFS estimates the fishery under the FMP would result in the annual capture of 126 to 195 loggerhead, 23 to 57 leatherback, and 1 to 11 olive ridley sea turtles. Of these, NMFS estimates that the West Coast-based pelagic longline fishery under the management measures proposed by the Council would result in the annual mortality of 42 to 91 loggerhead sea turtles, 4 to 25 leatherback sea turtles, and 1 to 4 olive ridley sea turtles.

Impacts to Sea Turtle Populations

Based on the analyses in the ESA section 7 consultation, NMFS concluded that if the fisheries under the FMP included shallow longline sets, the FMP is likely to jeopardize the continued existence of loggerhead sea turtles. However, when analyzed in conjunction with the prohibition of shallow longline sets east of the 150° West long. by West Coast-based pelagic longline vessels, the final conclusion for loggerhead sea turtles is that the fisheries operating under the FMP are not likely to jeopardize the continued existence of loggerhead sea turtles.

As a result, NMFS is proposing to implement restrictions in the West Coast-based pelagic longline fishery in waters east of 150° W. long. to conserve leatherback and loggerhead sea turtles as required under the ESA. Under this final rule, West Coast-based pelagic longline vessels will be prohibited from making shallow longline sets on the high seas in the Pacific Ocean east of 150° W. long. The prohibition of shallow longline sets west of 150° W. long. proposed under the FMP would also apply.

There are several other factors that may ultimately affect the management of the West Coast-based pelagic longline fishery. As noted, the FMP contains framework procedures by which adjustments in conservation and management measures may be made through regulatory amendments if warranted by available information and conditions. Further, the FMP recognizes a potential for exempted fishing permits that allow testing of alternative gear and/or techniques that might demonstrate that longline fishing can be conducted in a manner that will not adversely affect protected species or that will result in lower levels of bycatch. NMFS anticipates that the Council will review information as it is generated to consider possible changes in longline fishing regulations and may propose changes. NMFS will consider any such proposals.

Classification

NMFS has determined that this final rule is consistent with the ESA and other applicable laws.

The impacts of this action and alternatives are evaluated in accordance with the National Environmental Policy Act as the High Seas Pelagic Longline Alternative 3 in the EIS prepared by the Council (see **ADDRESSES**).

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule does not contain collection-of-information requirements subject to the Paperwork Reduction Act.

A combined RIR/IRFA was prepared that describes the economic impacts of the Council's FMP, which includes an analysis of this proposed action as High Seas Pelagic Longline Alternative 3. The RIR/IRFA is available from the Council (see **ADDRESSES**). No comments were received on the RIR/IRFA. The FRFA is available from NMFS (see **ADDRESSES**).

A summary of the RIR/RFA follows:

The **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this rule provide a description of the action, why it is being considered, and the legal basis for this action. That information is not repeated here.

A fish-harvesting business is considered a ''small'' business by the Small Business Administration (SBA) if it has annual receipts not in excess of $3.5 million. For related fish-processing businesses, a small business is one that employs 500 or fewer persons. For marinas and charter/party boats, a small business is one with annual receipts not in excess of $5.0 million.

This regulation imposes controls on the fleet of approximately 21 longline vessels that fish principally out of California ports for swordfish and associated species. All of these vessels would be considered small businesses under the SBA standards. Therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the rule. For most of the longline vessels involved, swordfish caught by longline gear makes up more than half of the total revenue from fish sales. Table 1 presents total ex-vessel revenue and dependence on swordfish landings for the 38 West coast-based vessels with high seas pelagic longline swordfish landings in 2001, broken down by the number of vessels with varying percent dependence on swordfish. NMFS believes these data are representative of 2002 fishing vessel revenues.

TABLE 1: TOTAL EX-VESSEL REVENUE AND DEPENDENCE ON SWORDFISH FOR 38 WEST-COAST-BASED VESSELS WITH HIGH SEAS PELAGIC LONGLINE LANDINGS IN 2001.

Number of Vessels	Dependence on High Seas Longline Caught Swordfish (category of swordfish revenue/total revenue)	Average Total Ex-vessel Revenue ($/vessel)	Average Percent Longline Swordfish (swordfish revenue/ total revenue)
4	<50%	$228,951	32.57%
3	50-70%	$170,067	60.99%
3	>70-80%	$222,089	76.66%
4	>80-90%	$258,335	86.77%
13	>90-95%	$182,211	93.26%
11	>95%	$219,885	97.57%

The impacts of alternatives to this action were evaluated in the RIR/IRFA. Three alternatives were considered for managing the high seas pelagic longline fishery. Under Alternative 1 (Status Quo), the FMP would not impose regulations on this fishery. The Council assumes that in the short-run, the fishery would continue to operate as it currently does, earning average annual profits of $6.7 million. However, in the long-run, the Council expects that regulations would be established under other authorities, due to concerns over unregulated bycatch, such that over time the fishery would disappear, and long-run profits would become zero as the fishery was phased out.

Alternative 2 (Council Proposed Action) would maintain the fishery, allowing fishermen to continue targeting swordfish east of 150° W. long., but impose some additional costs on longliners targeting swordfish on the high seas. Short-run average annual profits would remain at $6.7 million, minus the cost of adopting turtle and sea bird mitigation measures, accommodating observers, and using monitoring equipment. NMFS is developing guidelines for the design and performance standards of equipment required for the handling of incidentally caught sea turtles. The required tools can be purchased, for an estimated maximum cost of $2,000 per vessel, but vessel owners may also be able use the guidelines to fabricate the equipment with lower cost materials. Vessel owners do not pay an observer's salary, but do bear costs associated with providing room and board for the observer. Additionally, carrying an observer may increase the cost of insurance that the vessel carries. Vessel monitoring equipment costs approximately $2,000 to purchase and $500 to install, and would require annual maintenance estimated to cost approximately 20 percent of the purchase price per year. However, despite the equipment costs, the fishery would be able to land swordfish, and so over 25 years, the present value of long-run profits relative to the status quo would range between $78 and $105 million, using 7 percent and 4 percent discount rates, respectively. NMFS is not adopting the Council's proposed action because it does not adequately reduce the incidental capture and mortality of loggerhead sea turtles.

Alternative 3, which is the action adopted by NMFS, would prohibit fishermen from targeting swordfish east of 150° W. long. Swordfish are the target species of this fishery. This would effectively eliminate all but incidental swordfish landings and the short- and long-run profits currently associated with landing swordfish ($6.7 million, and $78 million to $105 million, respectively), at least until alternative fishing opportunities are identified. This loss assumes that all vessels in this fishery cease fishing, although longline fishing targeting tuna out of West Coast ports or Hawaii may be an alternative. However, current participants in the fishery indicate that without being able to target swordfish, the high seas longline fishery originating from West Coast ports would cease to exist.

In keeping with the intent of Executive Order 13132 to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, NMFS conferred with the States of California, Oregon, and Washington regarding this rule. NMFS has met with State Council and Plan Development Team representatives throughout the FMP development process. No comments were received

from the States opposing the prohibition of shallow sets east of the 150° W. long. and no objection has been raised by the Council. NMFS intends to continue engaging in informal and formal contacts with these States during the implementation of this final rule and amendments to the FMP.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: March 5, 2004.

Rebecca Lent,

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

■ For the reasons set out in the preamble, 50 CFR part 223 is amended to read as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 is revised to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 2. In § 223.206, a new paragraph (d)(9) is added to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(9) *Restrictions applicable to Pacific pelagic longline vessels.* In addition to the general prohibitions specified in § 600.725 of Chapter VI, it is unlawful for any person who is not operating under a western Pacific longline permit under § 660.21 to do any of the following on the high seas of the Pacific Ocean east of 150° W. long. and north of the equator (0° N. lat.):

(i) Direct fishing effort toward the harvest of swordfish (*Xiphias gladius*) using longline gear.

(ii) Possess a light stick on board a longline vessel. A light stick as used in this paragraph is any type of light emitting device, including any fluorescent *glow bead*, chemical, or electrically powered light that is affixed underwater to the longline gear.

(iii) An operator of a longline vessel subject to this section may land or possess no more than 10 swordfish from a fishing trip where any part of the trip included fishing east of 150° W. long. and north of the equator (0° N. lat.).

(iv) Fail to employ basket-style longline gear such that the mainline is deployed slack when fishing.

(v) When a conventional monofilament longline is deployed by a vessel, no fewer than 15 branch lines may be set between any two floats. Vessel operators using basket-style longline gear must set a minimum of 10 branch lines between any 2 floats.

(vi) Longline gear must be deployed such that the deepest point of the main longline between any two floats, i.e., the deepest point in each sag of the main line, is at a depth greater than 100 m (328.1 ft or 54.6 fm) below the sea surface.

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BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031125292–4061–02; I.D. 030504A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allocation of the 2004 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 8, 2004, through 1200 hrs, A.l.t., June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 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.

The A season allocation of the 2004 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area is 1,017 metric tons (mt) as established by the 2004 final harvest specifications of groundfish for the GOA (69 FR 9261, February 27, 2004).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season allocation of the 2004 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 817 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA.

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 would delay the closure of the A season allocation of the 2004 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area 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.

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

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

Dated: March 5, 2004.

Bruce C. Morehead,

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

[FR Doc. 04–5408 Filed 3–5–04; 3:07 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 48
Thursday, March 11, 2004

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–201–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319–111, –112, –113, and –114; A320–111, –211, –212, and –214; and A321–111, –112, and –211 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes. This proposal would require a one-time inspection to identify the serial number of the actuator of the thrust reverser blocker door, and corrective action if necessary. This action is necessary to prevent inadvertent deployment of the thrust reverser door, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 12, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–201–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–201–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 Rohr, Inc., 850 Lagoon Drive, Chula Vista, California 91910–2098. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–201–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–201–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that, during routine maintenance on the actuator of a thrust reverser blocker door, the chrome plating on the piston rod was found to extend up to the hydraulic feed holes. The actuator supplier discovered this quality concern and identified numerous suspect units during rework. The overextended chrome plating could contribute to decreased fatigue capability of the actuator and, in combination with other misrigging problems, could result in an inadvertent thrust reverser door deployment and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The actuator manufacturer has issued Rohr CFM56–5A/–5B Service Bulletin RA32078–112, Revision 1, dated February 6, 2002, which describes procedures for inspecting the actuator (part number D23090000–6) of the thrust reverser blocker door to identify the serial number, and replacing affected actuators with reworked actuators. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2002–337(B) R1, dated July 24, 2002, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed AD and French Airworthiness Directive

The applicability of the French airworthiness directive excludes airplanes on which the particular actuator has never been overhauled by TRW—Lucas Repair Center. U.S. operators are required to maintain records of only the date of overhaul—not the identity of the facility doing the overhaul. Therefore, this proposed AD would require inspection of all actuators having the particular part number, unless the maintenance records positively determine that TRW has never overhauled that actuator.

Cost Impact

We estimate that 551 airplanes of U.S. registry would be affected by this proposed AD. It would take about 4 work hours per airplane to identify the actuator part numbers, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $143,260, or $260 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket 2002–NM–201–AD.

Applicability: Model A319–111, –112, –113, and –114; A320–111, –211, –212, and –214; and A321–111, –112, and –211 series airplanes; certificated in any category; powered by CFM56–5A or –5B engines having any thrust reverser blocker door actuator part number D23090000–6.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent deployment of the thrust reverser door, which could result in reduced controllability of the airplane, accomplish the following:

Repair History

(a) If, from a review of the maintenance records, it can be positively determined that the thrust reverser blocker door actuator was never overhauled by ''TRW—Lucas Repair Center—Englewood, New Jersey,'' then no further work is required by this AD.

Inspection

(b) Before the actuator of the thrust reverser blocker door accumulates 7,000 total flight cycles since its last overhaul, or within 500 flight hours after the effective date of this AD, whichever occurs later: Do a general visual inspection to identify the part number and serial number of the actuator, in accordance with Rohr CFM56–5A/–5B Service Bulletin RA32078–112, Revision 1, dated February 6, 2002. Look for affected serial numbers as listed in paragraph 1.A(1) of the service bulletin.

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.''

(1) If no affected serial number is found, no more work is required by this paragraph.

(2) If any affected serial number is found: Before further flight, replace the affected actuator with a reworked part in accordance with the service bulletin.

(c) An inspection and rework done before the effective date of this AD in accordance with Rohr CFM56–5A/–5B Service Bulletin RA32078–112, dated October 22, 2001, is acceptable for compliance with the applicable requirements of this AD.

Parts Installation

(d) As of the effective date of this AD, no person may install, on any airplane, an actuator of the thrust reverser blocker door having a part number and serial number listed in paragraph 1.A.(1) of Rohr CFM56–5A/–5B Service Bulletin RA32078–112, Revision 1, dated February 6, 2002, unless the actuator has been reworked in accordance with the service bulletin.

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 for this AD.

Note 2: The subject of this AD is addressed in French airworthiness directive 2002–337(B) R1, dated July 24, 2002.

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

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–5447 Filed 3–10–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–67–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–135 and EMB–145 series airplanes. This proposal would require an inspection of the base and support surfaces of the glide slope antenna and of certain electrical connectors of the navigation system; and applicable corrective actions if necessary. These actions are necessary to prevent the display of erroneous or misleading information to the flight crew in the cockpit due to degradation in the performance of the VOR/ILS/MB system. These actions are intended to address the identified unsafe condition.

DATES: Comments must be received by April 12, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–67–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–67–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–67–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–67–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departamento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–135 and –145 series airplanes. The DAC advises that it has received reports of degradation in the performance of the VOR/ILS/MB system due to the presence of moisture, dirt, and corrosion between the base and the support of the glide slope antenna and in the electrical connectors of the navigation system. This condition, if not corrected, could result in the display of erroneous or misleading information to the flight crew in the cockpit.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 145–34–0069, dated March 28, 2002, which describes procedures for an inspection of the base and the support surfaces of the glide slope antenna, and of certain electrical connectors of the navigation system; and applicable corrective actions. The applicable corrective actions include cleaning the glide slope antenna base and support surfaces, repairing damage, applying silicone grease to the electrical connectors, and reinstalling the glide slope antenna with a new conductive gel gasket. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 2003–01–02R1, effective March 12, 2003, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 365 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $47,450, or $130 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira De Aeronautica S.A. (Embraer): Docket 2003–NM–67–AD.

Applicability: Model EMB–135 and –145 series airplanes, certificated in any category; as listed in EMBRAER Service Bulletin 145–34–0069, dated March 28, 2002.

Compliance: Required as indicated, unless accomplished previously.

To prevent display of erroneous or misleading information to the flight crew in the cockpit due to degradation in the performance of the VOR/ILS/MB system, accomplish the following:

Inspection and Corrective Actions

(a) Within 500 flight hours from the effective date of this AD: Perform a general visual inspection of the base and the support surfaces of the glide slope antenna and of certain electrical connectors of the navigation system for contamination and/or corrosion; and do all applicable corrective actions by accomplishing all the actions in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–34–0069, dated March 28, 2002. Do the actions per the service bulletin. Accomplish any applicable corrective actions before further flight.

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.''

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in Brazilian airworthiness directive 2003–01–02R1, effective March 12, 2003.

Issued in Renton, Washington, on March 2, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–5517 Filed 3–10–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–251–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas DC–9–82 (MD–82) and DC–9–83 (MD–83) Airplanes; and Model MD–88 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 McDonnell Douglas DC–9–82 (MD–82) and DC–9–83 (MD–83) airplanes; and Model MD–88 airplanes. This proposal would require inspection of the captain's and first officer's seat track locking pins for insufficient engagement caused by seat track misalignment, and corrective actions, if necessary. This action is necessary to prevent uncommanded movement of the captain's and first officer's seats during takeoff and landing, which could result in interference with the operation of the airplane and consequent temporary loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 26, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–251–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–251–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, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Cheyenne Del Carmen, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5338; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–251–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–251–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that the airplane manufacturer discovered, during production, fore and aft misalignment of cockpit floor seat tracks at the captain's and/or first officer's seat assembly on some McDonnell Douglas DC–9–82 airplanes. The seat track misalignment was enough to prevent full engagement of the seat locking pins into the seat track detent holes. This condition, if not corrected, could result in uncommanded movement of the captain's and first officer's seats during takeoff and landing, which could result in interference with the operation of the airplane and consequent temporary loss of control of the airplane.

Similar Airplanes

The subject areas on certain McDonnell Douglas Model DC–9–83 airplanes and Model MD–88 airplanes are identical to those on the affected McDonnell Douglas DC–9–82 airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD80–25A367, Revision 01, dated June 14, 2002, which describes procedures for a detailed inspection of the captain's and first officer's seat track locking pins for sufficient engagement; and corrective actions, if necessary. The corrective actions include the following actions:

- Adjusting/repairing the locking mechanism and/or replacing the lockpin with a new lockpin;
- Performing a detailed inspection of the lockpins for wear, and replacing lockpins with new lockpins, if necessary; and
- Performing a detailed inspection of the seat track for proper alignment, and repairing the seat track, if necessary.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 1,166 airplanes of the affected design in the worldwide fleet. The FAA estimates that 672 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 AD on U.S. operators is estimated to be $43,680 or $65 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. Manufacturer warranty remedies may be available for labor costs associated with this proposed AD. 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:

McDonnell Douglas: Docket 2003-NM–251-AD.

Applicability: Model DC–9–82 (MD–82) and DC–9–83 (MD–83) airplanes, and Model MD–88 airplanes; as listed in Boeing Alert Service Bulletin MD80–25A367, Revision 01, dated June 14, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded movement of the captain's and first officer's seats during takeoff and landing, which could result in interference with the operation of the airplane and consequent temporary loss of control of the airplane, accomplish the following:

Inspection and Corrective Actions

(a) Within 6 months after the effective date of this AD, perform a detailed inspection of the captain's and first officer's seat track locking pins for sufficient engagement, and any applicable corrective actions by accomplishing all the actions in the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–25A367, Revision 01, dated June 14, 2002. Do the actions per the service bulletin. Any applicable corrective actions must be accomplished before further flight.

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.''

Inspection/Corrective Actions Accomplished Per Previous Issue of Service Bulletin

(b) Any inspection/corrective action accomplished before the effective date of this AD per Boeing Alert Service Bulletin MD80–25A367, dated December 6, 1999, is considered acceptable for compliance with the corresponding inspection/corrective action specified in this AD.

Alternative Methods of Compliance

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

Issued in Renton, Washington, on March 2, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–5518 Filed 3–10–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–183–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–202, –203, –223, and –243 Airplanes, and A330–300 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 Airbus Model A330–202, –203, –223, and –243 airplanes, and A330–300 series airplanes. This proposal would require modification of the center box junction and upper sections of the center fuselage to reinforce the frame base junction, and related corrective action. This action is necessary to prevent fatigue cracking, which could result in reduced structural integrity of the fuselage. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 12, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–183–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–183–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: 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:

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–183–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–183–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330–202, –203, –223, and –243 airplanes, and A330–300 series airplanes. The DGAC advises that, during fatigue testing, cracking initiated and propagated in the center box junction and upper section of the fuselage between frame (FR) 40.3 and FR 45 at stringers 26 through 29. Such cracking, if not corrected, could result in reduced structural integrity of the fuselage.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A330–53–3126, Revision 01, dated March 19, 2003, which describes procedures for modification of the center box junction and upper bent sections of the center fuselage, between FR 40.3 and FR 45 at stringers 26 through 29, on the left and right sides of the airplane, and related corrective action. This modification includes performing rotating probe inspections for cracking of certain fastener holes, drilling and reaming certain fastener holes (as a follow-on action for uncracked fastener holes), cold-working certain fastener holes, and replacing certain existing fasteners with improved fasteners. The service bulletin also specifies contacting Airbus for repair if any cracking is found during accomplishment of the modification. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2002–528(B), dated October 30, 2002, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that this AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Among This Proposed AD, French Airworthiness Directive and Service Bulletin

For Model A330–301, –322, –321, –341, and –342 airplanes, the French airworthiness directive and the service bulletin specify doing the modification of the center box junction and upper sections of the center fuselage before the accumulation of 13,500 flight cycles or 39,200 flight hours ''since the first flight of the airplane, whichever is first.'' For Model A330–202, –203, –223, –243, –323, and –343 airplanes, the modification is to be done before the accumulation of 11,400 flight cycles or 33,100 flight hours ''since the first flight of the airplane, whichever is first.''

This proposed AD would require accomplishment of the modification at the following times: For Model A330–301, –322, –321, –341, and –342 airplanes, ''Before the accumulation of 13,500 total flight cycles or 39,200 total flight hours since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever is first.'' For Model A330–202, –203, –223, –243, –323, and –343 airplanes, ''Before the accumulation of 11,400 total flight cycles or 33,100 total flight hours since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever is first.'' These compliance times include a grace period of 6 months after the effective date of the AD. This decision is based on our determination that ''since the first flight of the airplane'' may be interpreted differently by different operators. We find that our proposed terminology is generally understood within the industry and records will always exist that establish these dates with certainty. In addition, we have determined that a 6-month grace period will ensure an acceptable level of safety and is an appropriate interval of time wherein the modification can be accomplished during scheduled maintenance intervals for the majority of affected operators.

The service bulletin specifies that operators may contact Airbus for disposition of certain repair conditions, but this proposed AD would require operators to repair those conditions per a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Cost Impact

The FAA estimates that 9 airplanes of U.S. registry would be affected by this proposed AD, that it would take about 67 work hours per airplane to do the proposed modification, and that the average labor rate is $65 per work hour. Required parts would cost about $1,420 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $51,975, or $5,775 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific

actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket 2003–NM–183–AD.

Applicability: A330–202, –203, –223, and –243 airplanes, and A330–300 series airplanes; certificated in any category; on which Airbus Modification 49404 has not been done.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking, which could result in reduced structural integrity of the fuselage, accomplish the following:

Modification

(a) Modify the center box junction and upper bent sections of the center fuselage, between frame (FR) 40.3 and FR 45 at stringers 26 through 29, on the left and right sides of the airplane, by doing all the actions per the Accomplishment Instructions of Airbus Service Bulletin A330–53–3126, Revision 01, dated March 19, 2003. Do the modification at the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) For Model A330–301, –322, –321, –341, and –342 airplanes: Do the modification at the later of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Before the accumulation of 13,500 total flight cycles or 39,200 total flight hours since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever is first.

(ii) Within 6 months after the effective date of this AD.

(2) For Model A330–202, –203, –223, –243, –323, and –343 airplanes: Do the modification at the later of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Before the accumulation of 11,400 total flight cycles or 33,100 total flight hours since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever is first.

(ii) Within 6 months after the effective date of this AD.

Previously Accomplished Actions

(b) Accomplishment of the modification per Airbus Service Bulletin A330–53–3126, dated October 18, 2002, is considered acceptable for compliance with the modification required by paragraph (a) of this AD.

Repair

(c) If any crack is found during accomplishment of the modification required by paragraph (a) of this AD, and the service bulletin recommends contacting Airbus for appropriate action: Before further flight, repair per 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).

Alternative Methods of Compliance

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

Note 1: The subject of this AD is addressed in French airworthiness directive 2002–528(B), dated October 30, 2002.

Issued in Renton, Washington, on March 2, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–5519 Filed 3–10–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–163–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) 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 Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This proposal would require performing an inspection of the electrical harnesses of the spoiler and the brake pressure sensor unit on both sides of the wing root to detect any chafing or wire damage, and repairing or replacing any damaged or chafed harness or wire with a new harness, as applicable. This action is necessary to detect and correct chafing of the electrical cables of the spoiler and brake pressure sensor unit on both sides of the wing root, which could result in loss of flight control system and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 12, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–163–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–163–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 Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York.

FOR FURTHER INFORMATION CONTACT:

Wing Chan, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7311; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–163–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–163–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. TCCA advises that it has received three reports of chafing of the electrical cables of the spoiler and brake pressure sensor unit (BPSU) on both sides of the wing root. The chafing condition occurred where electrical cables (harnesses) are routed through two misaligned adjacent lightening holes in the wing box of both wings at station 545. The condition can exist due to tight routing of the harness in this location and movement of the harnesses due to wing flex and vibration. These conditions, if not corrected, could result in loss of flight control system and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Bombardier has issued Alert Service Bulletin A601R–27–101, Revision 'A', dated October 26, 2001. The service bulletin describes, among other actions, procedures for performing a general visual inspection of the electrical harnesses of the spoiler and the BPSU on both sides of the wing root to detect any chafing or wire damage, and repairing or replacing any damaged or chafed harness or wire with a new harness, as applicable. TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–2003–14, dated May 15, 2003, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed AD and Referenced Service Bulletin

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for completing and submitting to the manufacturer a comment sheet related to service bulletin quality and a sheet recording compliance with the service bulletin, this proposed AD would not require those actions. The FAA does not need this information from operators.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 191 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 AD on U.S. operators is estimated to be $12,415, 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 proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly Canadair): Docket 2003–NM–163–AD.

Applicability: Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7003 through 7067 inclusive, and 7069 through 7351 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct chafing of the electrical cables of the spoiler and brake pressure sensor unit (BPSU) on both sides of the wing root, which could result in loss of flight control system and consequent reduced controllability of the airplane, accomplish the following:

Initial and Repetitive Inspections

(a) Within 500 flight hours after the effective date of this AD, do a general visual inspection of the electrical harnesses of the spoiler and the BPSU on both sides of the wing root to detect any chafing or wire damage, in accordance with Part A of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–27–101, Revision 'A', dated October 26, 2001. Repeat the inspection thereafter at intervals not to exceed 4,000 flight hours.

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.''

Corrective Actions

(b) If any damaged or chafed electrical harness or wire is found during any inspection required by paragraph (a) of this AD, before further flight, do either paragraph (b)(1) or (b)(2) of this AD.

(1) Replace any damaged or chafed harness or wire with a new harness, in accordance with Part C or Part D of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–27–101, Revision 'A', dated October 26, 2001, as applicable.

(2) Repair any damaged or chafed electrical harness in accordance with Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–27–101, Revision 'A', dated October 26, 2001. Within 4,000 flight hours after the repair is done, do paragraph (b)(1) of this AD.

Credit for Earlier Service Bulletin

(c) Replacements and repairs accomplished before the effective date of this AD in accordance with Bombardier Alert Service Bulletin A601R–27–101, Initial Issue, dated April 17, 2000, are acceptable for compliance with the requirements of paragraph (b) of this AD.

Exception to Service Bulletin

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

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in Canadian airworthiness directive CF–2003–14, dated May 15, 2003.

Issued in Renton, Washington, on March 2, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–5520 Filed 3–10–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–33–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–365N, SA–365N1, AS–365N2, AS 365 N3, SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD) for Eurocopter France (Eurocopter) Model SA–365N, SA–365N1, AS–365N2, AS 365 N3, SA–366G1 helicopters that would have required inspecting the 9-degree frame flange (frame) for the correct edge distance of the four attachment holes for the stretcher support and for a crack, and repairing the frame, if necessary. That proposal was prompted by a quality control check that revealed some stretcher attachment holes were improperly located on the frame where there was insufficient edge distance. This action revises the proposed rule by requiring the same actions as the previous proposal, but adds recurring inspections and refers to an engineering report that lists approved U.S. alternative fasteners and materials that may be used in any required repairs. The actions specified by this proposed AD are intended to prevent failure of the frame due to a crack at the stretcher support attachment holes, loss of a passenger door, damage to the rotor system, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before May 10, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–33–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to

the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5130, fax (817) 222–5961.

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 should 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 document may be changed in light of the comments received.

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 mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2001–SW–33–AD.'' The postcard will be date stamped and returned to the commenter.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an AD for Eurocopter Model SA–365N, SA–365N1, AS–365N2, AS 365 N3, SA–366G1 helicopters was published in the **Federal Register** on December 18, 2002 (67 FR 77444). That proposal would have required, within 50 hours time-in-service (TIS), inspecting the frame for the correct edge distance of the four attachment holes of the stretcher support and for a crack, and repairing the frame, if necessary. The repair was to be approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. That NPRM was prompted by a quality control check that revealed some stretcher attachment holes were improperly located on the frame where there was insufficient edge distance. That condition, if not corrected, could result in failure of the frame due to a crack at the stretcher support attachment holes, loss of a passenger door, damage to the rotor system, and subsequent loss of control of the helicopter.

Since the issuance of that NPRM, we have decided to allow the use of U.S.-available alternative fasteners and materials. Therefore, we determined that this proposal should reference an Addendum to Eurocopter France AS 365 Alert Service Bulletin 53.00.43, dated January 31, 2001, that provides for use of U.S.-available alternative fasteners and materials. Additionally, we have determined that it is unnecessary to require installation of a reinforcing angle, and it has been replaced with a 550-hour repetitive inspection for those helicopters that have an edge distance on the frame of less than 5mm, are not cracked, and have not been repaired.

Since this change expands the scope of the originally proposed rule, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

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 AD 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.

The FAA estimates that 45 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours to visually inspect each helicopter and 10 work hours to repair an estimated 10 helicopters to correct edge distance only and 12 work hours to repair edge distance and cracks for an estimated 5 helicopters, and that the average labor rate is $65 per work hour. Required parts would cost approximately $200 per helicopter for the repair of the 15 helicopters. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $19,250, assuming each operator repairs the helicopter rather than performs the repetitive inspection.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Eurocopter France: Docket No. 2001–SW–33–AD.

Applicability: Model SA–365N, SA–365N1, AS–365N2, AS 365 N3, and SA–366G1 helicopters, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the 9-degree frame flange (frame) due to a crack at the stretcher support attachment holes, loss of a passenger

door, damage to the rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 50 hours time-in-service (TIS), measure the edge distance of each 9-degree frame at the four attachment holes of the stretcher support at Z2321 as shown in detail ''A'' of Figure 1 in Eurocopter France AS 365 Alert Service Bulletin 53.00.43, dated January 31, 2001, for the Models SA–365N, SA–365N1, AS–365N2, and AS 365 N3 (365 ASB) or Eurocopter France AS 366 Alert Service Bulletin 53.06, dated June 1, 2001, for the Model SA366G–1 (366 ASB) helicopters. Inspect the area around the attachment holes for a crack.

(1) If the edge distance of all attachment holes is equal to or more than 5 mm (0.197 inch) and no crack is present, no further action is required by this AD.

(2) If the edge distance is less than 5 mm and no crack is present, reinspect the area at intervals not to exceed 550 hours TIS and modify the frame no later than the next 500 hour inspection in accordance with paragraph 2.B.2. of the 365 ASB or 366 ASB, as appropriate.

(3) If the frame is cracked, before further flight, repair the frame. Acceptable U.S. alternatives to the fasteners and materials needed to perform repairs or modifications are listed in American Eurocopter Engineering Report No. AEC/03R–E–005, ''Addendum ASB 53.00.42 and 53.00.43 AS365'', dated January 29, 2003.

(4) Modifying or repairing the frame constitutes terminating action for the requirements of this AD, which is attached to the 365 ASB.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

Note: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. 2001–283–025(A), dated July 11, 2001, for Model SA366 helicopters, and AD No. 2001–061–053(A), dated February 21, 2001, for Model AS 365N, N1, N2, and N3 helicopters.

Issued in Fort Worth, Texas, on March 4, 2004.

Kim Smith,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 04–5521 Filed 3–10–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–70–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all Airbus Model A319, A320, and A321 series airplanes, that would have required operators to revise the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness to incorporate service life limits for certain items and inspections to detect fatigue cracking, accidental damage, or corrosion in certain structures. This new action would require operators to revise the ALS of the Instructions for Continued Airworthiness to incorporate new and more restrictive service life limits for certain items, and new and more restrictive inspections to detect fatigue cracking, accidental damage, or corrosion in certain structures. The actions specified by this new proposed AD are intended to ensure the continued structural integrity of these airplanes. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 5, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–70–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. 2000–NM–70–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: 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:

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 2000–NM–70–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. 2000–NM–70–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to all Airbus Model A319, A320, and A321 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on November 3, 2000 (65 FR 66197). That NPRM would have required operators to revise the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness to incorporate service life limits for certain items and inspections to detect fatigue cracking, accidental damage, or corrosion in certain structures. That NPRM was prompted by issuance of Revision 1 to section 9–1 (Life Limited/Monitored Parts) of the Airbus Industrie A319/A320/A321 Maintenance Planning Document, which specifies new or more restrictive life limits. That NPRM was also prompted by issuance of Issue 3 of the Airbus Industrie Airworthiness Limitations Items (ALI) document AI/SE–M4/95A.0252/96, dated May 27, 1999, which specifies new or more restrictive compliance times for structural inspection. Fatigue cracking, accidental damage, or corrosion in certain structure, if not corrected, could result in reduced structural integrity of the airplanes.

Actions Since Issuance of Previous Proposal

Since issuance of the previous proposal, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has issued French airworthiness directives F–2004–018, dated February 4, 2004; and F–2004–032, dated February 18, 2004. These French ADs mandate Revision 6 the ALS of the Instructions for Continued Airworthiness, which introduces new and more restrictive life limits, and new and more restrictive inspections and inspection intervals.

Explanation of Relevant Service Information

Airbus has issued Section 9–1, ''Life Limits/Monitored Parts,'' Revision 06, dated June 13, 2003, of Airbus A318/A319/A320/A321 Maintenance Planning Document (MPD), which specifies new and more restrictive life limits for certain items. Airbus has also issued Section 9–2, ''Airworthiness Limitation Items,'' Revision 06, dated June 13, 2003, of the A318/A319/A320/A321 MPD; and Airbus A318/A319/A320/A321 ALI document, AI/SE–M4/95A.0252/96, Issue 6, dated May 15, 2003; which specify new and more restrictive inspections for significant structural items (SSIs). Accomplishment of the actions specified in these documents is intended to adequately address the identified unsafe condition.

Conclusion

Since this proposed AD would mandate adherence to the new and more restrictive life limits, and new and more restrictive inspections; this proposed action would expand the scope of the earlier proposed AD. Therefore, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Explanation of Change to Compliance Time

We have changed the compliance time for revising the ALS of the Instructions for Continued Airworthiness from 30 days to 2 months. This change reflects the compliance time listed in French airworthiness directive F–2004–18, dated February 4, 2004, and in French airworthiness directive F–2004–032, dated February 18, 2004.

Explanation of Action Taken by the FAA

In accordance with airworthiness standards requiring ''damage tolerance assessments'' for transport category airplanes (§ 25.1529 of the Federal Aviation Regulations (14 CFR 25.1529), and the Appendices referenced in that section), all products certificated to comply with that section must have Instructions for Continued Airworthiness (or, for some products, maintenance manuals) that include an ALS. That section must set forth:

- Mandatory replacement times for structural components,
- Structural inspection intervals, and
- Related approved structural inspection procedures necessary to show compliance with the damage-tolerance requirements.

Compliance with the terms specified in the ALS is required by sections 43.16 (for persons maintaining products) and 91.403 (for operators) of the Federal Aviation Regulations (14 CFR 43.16 and 91.403).

In order to require compliance with these inspection intervals and life limits, the FAA must engage in rulemaking, namely the issuance of an AD. For products certificated to comply with the referenced part 25 requirements, it is within the authority of the FAA to issue an AD requiring a revision to the ALS that includes reduced life limits, or new or different structural inspection requirements. These revisions then are mandatory for operators under section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403), which prohibits operation of an airplane for which airworthiness limitations have been issued unless the inspection intervals specified in those limitations have been complied with.

After that document is revised, as required, and the AD has been fully complied with, the life limit or structural inspection change remains enforceable as a part of the airworthiness limitations. (This is analogous to ADs that require changes to the Limitations Section of the Airplane Flight Manual.)

Requiring a revision of the airworthiness limitations, rather than requiring individual inspections, is advantageous for operators because it allows them to record AD compliance status only once—at the time they make the revision—rather than after every inspection. It also has the advantage of keeping all airworthiness limitations, whether imposed by original certification or by AD, in one place within the operator's maintenance program, thereby reducing the risk of non-compliance because of oversight or confusion.

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, paragraph (d) and Note 1 of the original NPRM are not included in this supplemental NPRM, and paragraph (c) of the original NPRM has been revised and is included as paragraph (d) of this supplemental NPRM.

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 605 airplanes of U.S. registry that would be affected by this proposed AD. It would take approximately 1 work hour per airplane to accomplish the proposed revision to the ALS, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $39,325, or $65 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket 2000–NM–70–AD.

Applicability: All Model A319, A320, and A321 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure continued structural integrity of these airplanes, accomplish the following:

Airworthiness Limitations Revision

(a) For all airplanes: Within 2 months after the effective date of this AD, revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness by incorporating into the ALS sub-Section 9–1–2, ''Life Limits/Monitored Parts,'' and sub-Section 9–1–3, ''Demonstrated Fatigue Life Parts,'' both Revision 06, dated June 13, 2003, of the Airbus A318/A319/A320/A321 Maintenance Planning Document.

(b) For all airplanes except Model A319 series airplanes on which Airbus Modification 28238, 28162, and 28342 was incorporated during production: Within 2 months after the effective date of this AD, revise the ALS of the Instructions for Continued Airworthiness by incorporating into the ALS sub-Section 9–2, ''Airworthiness Limitation Items,'' Revision 6, dated June 13, 2003, or the Airbus A318/A319/A320/A321 Maintenance Planning Document (MPD); and Airbus A318/A319/A320/A321 Airworthiness Limitation Items AI/SE–M4/95A.0252/96, Issue 6, dated May 15, 2003 (approved by the Direction Générale de l'Aviation Civile (DGAC) on July 15, 2003).

(c) Except as provided by paragraph (d) of this AD: After the actions specified in paragraphs (a) and (b) of this AD have been accomplished, no alternative life limits, inspections, or inspection intervals may be approved for the structural elements specified in the documents listed in paragraphs (a) and (b) of this AD.

Alternative Methods of Compliance

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

Note 1: The subject of this AD is addressed in French airworthiness directive F–2004–018, dated February 4, 2004; and in French airworthiness directive F–2004–032, dated February 18, 2004.

Issued in Renton, Washington, on March 2, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–5457 Filed 3–10–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–136890–02]

RIN 1545–BA90

Transfers To Provide for Satisfaction of Contested Liabilities; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed rulemaking relating to transfers to provide for satisfaction of contested liabilities.

DATES: The public hearing originally scheduled for Tuesday, March 23, 2004, at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Guy R. Traynor, Procedures and Administration, Publications & Regulations Branch, at (202) 622–3693 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on November 21, 2003 (68 FR 65645), announced that a public hearing was scheduled for March 23, 2004 at 10 a.m., in the auditorium of the Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is proposed regulations under section 461 of the Internal Revenue Code. The public comment period for these proposed regulations expired on February 19, 2004.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of topics to be addressed by March 2, 2004. As of March 8, 2004, no one has requested to speak. Therefore, the public hearing

scheduled for March 23, 2004 is cancelled.

Guy R. Traynor,

Federal Register Certifying Officer, Publications & Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures & Administration).

[FR Doc. 04–5562 Filed 3–10–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–115471–03]

RIN 1545–BC03

New Markets Tax Credit Amendments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: 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 revised temporary regulations relating to the new markets tax credit. The text of those 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 Wednesday, June 2, 2004, must be received by May 10, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–115471–03), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–115471–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the IRS Internet site at *http://www.irs.gov/regs.* The public hearing will be held in IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Paul F. Handleman or Lauren R. Taylor, (202) 622–3040; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Lanita Van Dyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 45D. The temporary regulations provide guidance for taxpayers claiming the new markets tax credit under section 45D. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

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 the regulations do not impose a new 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 their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are requested on all aspects of the proposed regulations. In addition, the IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be revised to be more easily understood. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, June 2, 2004, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area at the Constitution Avenue entrance more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (preferably a signed original and eight (8) copies) by May 10, 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 regulations is Paul F. Handleman, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. 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 1.45D–1 is amended as follows:

§ 1.45D–1 New markets tax credit.

[The text of the amendments to this proposed section is the same as the text of the amendments to ''1.45D–1T published elsewhere in this issue of the **Federal Register**.]

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–5561 Filed 3–10–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–053–FOR]

Maryland Regulatory Program

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

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

SUMMARY: We are announcing receipt of a proposed amendment to the Maryland regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment consists of changes to the Annotated Code of Maryland as contained in House Bill 893. The amendment requires the Department of the Environment to take action for permit applications, permit revisions, and revised applications within certain time periods. The amendment is intended to require the timely review of applications for open-pit mining permits.

DATES: We will accept written comments on this amendment until 4 p.m. (local time), on April 12, 2004. If requested, we will hold a public hearing on the amendment on April 5, 2004. We will accept requests to speak at a hearing until 4 p.m. (local time), on March 26, 2004.

ADDRESSES: You should mail or hand-deliver written comments and requests to speak at the hearing to Mr. George Rieger at the address listed below.

You may review copies of the Maryland 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 the Appalachian Regional Coordinating Center.

Mr. George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2153. E-mail: *grieger@osmre.gov.*

Mr. C. Edmon Larrimore, Program Manager, Mining Program, 1800 Washington Boulevard, Baltimore, Maryland 21230, Telephone: (410) 537–3000, or 1–800–633–6101.

FOR FURTHER INFORMATION CONTACT: Mr. George Rieger, Telephone: (412) 937–2153. Internet: *grieger@osmre.gov.*

SUPPLEMENTARY INFORMATION:

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

I. Background on the Maryland 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 the Act'; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act * * *'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Maryland program on December 1, 1980. You can find background information on the Maryland program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 1, 1980, **Federal Register** (45 FR 79431). You can also find later actions concerning Maryland's program and program amendments at 30 CFR 920.12, 920.15, and 920.16.

II. Description of the Proposed Amendment

By letter dated January 7, 2004 (Administrative Record Number MD–586–00), Maryland sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Maryland sent the amendment to include changes made at its own initiative. The amendment consists of Maryland House Bill 893, which was enacted for the purpose of requiring the Department of the Environment to review an application for an open-pit mining permit in a timely manner. The bill revises the Annotated Code of Maryland, and requires the Department of the Environment to take action for permit applications, permit revisions, and revised applications within certain time periods. The full text of the program amendment is available to you to read at the locations listed above under **ADDRESSES.** Specifically, Maryland proposes the following amendments to the Annotated Code of Maryland.

At section 15–505(d)(6), the words ''in a timely manner'' are added to the end of the provision as follows:

(6) The Department shall review all aspects of the application, including information pertaining to any other permit required from the Department for the proposed strip mining operation in a timely manner.

Section 15–505(d)(7) is amended by adding new (7)(I)(1), (7)(I)(2), (7)(I)(2)(A) (7)(I)(2)(B), and (7)(III). As amended, section 15–505(d)(7) provides as follows:

(7)(I) Upon completion of the review required by paragraph (6) of this subsection, the Department shall grant, require modification of, or deny the application for a permit and notify the applicant and any participant to a public informational hearing, in writing, of its decision:

1. Within 90 days after the date the Department determines that an application for a new permit or an application for permit revision that proposes significant alterations in the permit is complete; or

2. Within 45 days after receiving:

A. A revised application for a new permit; or

B. An application for a permit revision that does not propose significant alterations in the permit.

(II) The applicant for a permit shall have the burden of establishing that the application is in compliance with all of the requirements of this subtitle and the rules and regulations issued under this subtitle.

(III) The Department may provide for one extension of the deadlines in subparagraph (I) of this paragraph for up to 30 days by notifying the applicant in writing prior to the expiration of the original deadlines.

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 Maryland 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 may 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 Appalachian Regional Coordinating Center may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII, Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SATS NO. MD–053–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 Appalachian Regional Coordinating Center at (412) 937–2153.

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 inspection 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. (local time), on March 26, 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 will be 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

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt 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. The basis for this determination is that decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

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

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a

significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

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 analysis performed under various laws and executive orders for the counterpart Federal regulations.

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 analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 24, 2004.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 04–5498 Filed 3–10–04; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD09–03–233]

RIN 1625–AA08 [Previously AA00]

Special Local Regulations; Head of the Cuyahoga Regatta, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On July 16, 2003, the Coast Guard published a notice of proposed rulemaking (NPRM) requesting comments on the proposed safety zone for the annual Head of the Cuyahoga Rowing Regatta in Cleveland, Ohio. The Coast Guard received four letters with several substantive comments. Based upon the comments, a new final rule is being proposed under 33 CFR part 100, in lieu of a safety zone under part 165.

DATES: Comments and related material must reach the Coast Guard on or before April 26, 2004.

ADDRESSES: You may mail comments and related material to Coast Guard Marine Safety Office Cleveland (CGD09–03–233), 1055 East Ninth Street, Cleveland, Ohio, 44114. Marine Safety Office Cleveland maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and available for inspection or copying at Coast Guard MSO Cleveland between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Allen Turner, U.S. Coast Guard Marine Safety Office Cleveland, at (216) 937–0128.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD09–03–233), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please include a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard MSO Cleveland at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On July 16, 2003, the Coast Guard published an NPRM in the **Federal Register** proposing a safety zone for the annual Head of the Cuyahoga Rowing Regatta event (68 FR 41982). The proposed safety zone was introduced to control vessel traffic within the immediate location of the regatta to ensure the safety of life and property on the navigable waters of the United States during the event. The Coast Guard received four comments in response to the July 16, 2003 NPRM.

The first comment addressed the appropriate use of a safety zone for this event. The proposed safety zone restricted commercial vessel traffic on the Cuyahoga River during the event, with the exception of a two-hour window to allow for commercial transits. We agree that the use of a safety zone to restrict vessel traffic in the vicinity of a regatta is not the most appropriate type of waterway regulation for this event. Therefore, the safety zone will not be implemented. Alternatively, a proposal to manage vessel traffic using special local regulations under 33 CFR part 100 is presented below.

The second comment addressed the two-hour window intended to facilitate commercial vessel traffic during the event. Commercial entities have determined that the two-hour window was insufficient for safe passage. We concur with this statement, and the two-hour window will be withdrawn. The event will now run continuous from 8 a.m. until 3 p.m. The Coast Guard will provide sufficient notice to the public so commercial entities will have ample opportunity to schedule around the event.

The third comment addressed the necessity of a Final Rule for this event, stating that a recurring temporary final rule would be advantageous to all parties involved because it would allow for comments each year. We disagree. There is no need to initiate a separate rulemaking process every time for this annual event. Since 1996, this event has

been held annually and is expected to continue into the foreseeable future. The event sponsors will still be required to submit a marine event permit and the dates will be published annually. However, since the event is not temporary in nature, a permanent rule should be established. Furthermore, the final rule can be cancelled if there are any significant changes.

The fourth comment stated that commercial vessel restrictions on the river during the event were necessary to ensure the safety of participants. We agree that vessel traffic on the Cuyahoga River must be managed to ensure safety of life and property on the navigable waters of the United States during this event. Using special local regulations under 33 CFR part 100 allows the Coast Guard to manage vessel traffic during the event and ensure safety of competitors, shells, and course markings from recreational and commercial vessels.

Discussion of Proposed Rule

This proposed rule would establish special local regulations for an annual event on the third Saturday of September from 8 a.m. until 3 p.m. We intend to maintain positive control over all vessel movement in the vicinity of the event, and therefore all vessels are required to obtain permission from the Coast Guard Patrol Commander prior to transiting the area.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed this rule under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary.

The Coast Guard will publish full and adequate notice of the dates of the regatta, together with full and complete information of the special local regulations to ensure commercial entities have ample time to schedule around the event.

Small Entities

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

The Coast Guard certifies under 5 U. S. C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of the regulated area.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: The proposed special local regulations are only in effect for a few hours on the day of the event and the Coast Guard will provide full and adequate notice of the dates of the regatta, together with full and complete information of the special local regulations to ensure commercial entities have ample time to schedule around the event. Recreational vessels can safely pass through the regulated area under sponsor or Coast Guard escort.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

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

Collection of Information

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

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

The Coast Guard has analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have

determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule under Commandant Instruction M16475.1C, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of categorical exclusion under Section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded under Figure 2–1, paragraph 35(h) of the Instruction, from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

Marine safety, navigation (water), Reporting and recordkeeping requirements, waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—REGATTAS AND MARINE PARADES

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; and Department of Homeland Security Delegation No. 0170.1.

2. Add § 100.903 to read as follows:

§ 100.903 Head of the Cuyahoga Regatta, Cleveland, OH.

(a) Regulated Area. All portions of the Cuyahoga River between a line drawn perpendicular to each riverbank at 41°29′19″ N, 81°40′50″ W (Marathon Bend), to a line drawn perpendicular to each riverbank at 41°29′56″ N, 81°42′27″ W (confluence with the Old River). These coordinates are based upon North American Datum (NAD 1983).

(b) Enforcement Period. This section will be enforced annually on the third Saturday of September from 8 a.m. until 3 p.m. The Coast Guard will publish the dates annually.

(c) Special Local Regulations. All vessels are prohibited from transiting the area without permission from Coast Guard Patrol Commander via VHF/FM Radio, Channel 16, to transit the area.

Dated: February 23, 2004.

Lorne W. Thomas,

Commander, U.S. Coast Guard, Captain of the Port Cleveland.

[FR Doc. 04–5466 Filed 3–10–04; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2001–6A]

Compulsory License for Making and Distributing Phonorecords, Including Digital Phonorecord Deliveries

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is proposing to amend its regulations governing the content and service of certain notices on the copyright owner of a musical work. The notice is served or filed by a person who intends to use a musical work to make and distribute phonorecords, including by means of digital phonorecord deliveries, under a compulsory license.

DATES: Comments should be received no later than April 12, 2004.

ADDRESSES: An original and ten copies of any comment shall be sent to the Copyright Office. If comments are mailed, the address is: Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024–0400. If comments are hand delivered by a commercial, non-government courier or messenger, comments must be delivered to: The Congressional Courier Acceptance Site, located at Second and D Streets, NE., between 8:30 a.m. and 4 p.m., and addressed to ''Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, First and Independence Avenue, SE., Washington, DC 20559–6000.'' If comments are hand delivered by a private party, they must be addressed to: ''Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, First and Independence Avenue, SE., Washington, DC 20559–6000,'' and delivered to the Public Information Office, James Madison Memorial Building, Room 401, First and Independence Avenue, SE., Washington, DC between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Telephone: (202) 707–8380; Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

I. Background

Section 115 of the Copyright Act, 17 U.S.C., provides that ''[w]hen phonorecords of a nondramatic musical work have been distributed to the public in the United States under the authority of the copyright owner, any other person * * * may, by complying with the provisions of this section, obtain a compulsory license to make and distribute phonorecords of the work.'' 17 U.S.C. 115(a)(1). The compulsory license set forth in section 115 permits the use of a nondramatic musical work without the consent of the copyright owner if certain conditions are met and royalties are paid.

One such condition precedent set forth in the law requires any person using the section 115 license to provide notice to the copyright owner of a musical work ''before or within thirty days after making, and before distributing any phonorecords' of his or her intent to use the copyright owner's work under the statutory license. 17 U.S.C. 115(b). Pursuant to this section, the Register of Copyrights issued regulations prescribing the form, content, and manner of service of the Notice of Intention (''Notice'') to obtain the license. Final regulations governing the content and service of the Notice were adopted on November 28, 1980. 45 FR 79038 (November 28, 1980). These rules served the traditional needs of the statutory licensee who wished to use a copyrighted musical work to make their own sound recording under the traditional section 115 mechanical license.

Section 115 was subsequently amended on November 1, 1995, with the enactment of the Digital Performance Right in Sound Recordings Act of 1995 (''DPRA''), Public Law 104–39 (1995). Among other things, this law expanded the section 115 compulsory license for making and distributing phonorecords to include not only the traditional use of the musical work to make an original sound recording, but also the distribution of a phonorecord of a nondramatic musical work by means of a digital phonorecord delivery (''DPD''). *See* 17 U.S.C. 115(c)(3)(A). As defined

in the law, a digital phonorecord delivery is:

> each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording, regardless of whether the digital transmission is also a public performance of the sound recording or any nondramatic musical work embodied therein.

17 U.S.C. 115(d).

The right to make and distribute a DPD, however, does not include the exclusive rights to make and distribute the sound recording itself. These rights are held by the copyright owner of the sound recording and must be cleared through a separate transaction. In fact, to avoid any confusion on this point, the Digital Millennium Copyright Act of 1998 (''DMCA''), Public Law 105–304, clarifies that the making of a DPD will constitute an act of infringement under section 501 unless: (1) The copyright owner of the sound recording authorizes the making of the DPD, and (2) the owner of the copyright of the sound recording or the entity making the DPD has obtained a compulsory license under section 115 or has otherwise been authorized to distribute, by means of a DPD, each musical work embodied in the sound recording. *See* 17 U.S.C. 115(c)(3)(H).

What the DMCA did not do is change or alter the longstanding notice requirement set forth in section 115(b). However, the amendments did require the Copyright Office to amend its regulations governing the content and service of the required Notices of Intention to use the license to include the making of a digital phonorecord delivery, and the Office did so in 1999. *See* 64 FR 41286 (July 30, 1999). Unfortunately, these changes did not go far enough to address the needs of certain digital music services which anticipate using most, if not all, of the musical works embodied in the sound recordings readily available in today's marketplace under the section 115 license.

Consequently, on August 28, 2001, the Copyright Office published a second notice of proposed rulemaking in which it suggested further amendments to those rules associated with service of a Notice to use the section 115 license and filing of such notice with the Office. 66 FR 45241 (August 28, 2001). The purpose of these amendments is to streamline the notification process and make it easier for the licensee to serve the copyright owner with notice of the potential user's intention to use multiple musical works.

II. Comments

In response to this notice, the Copyright Office received comments from Wixen Music Publishing, Inc. (''Wixen''), the Digital Media Association (''DiMA''), Napster, Inc. (''Napster''),[1] and a joint comment from the Recording Industry Association of America, Inc., the National Music Publishers' Association, Inc., and The Harry Fox Agency, Inc. (collectively, ''RIAA/NMPA/HFA'').

Wixen filed general comments which oppose the proposed amendments. It argues that the changes are designed to make it easier to use the statutory license and that increased use of the license is not a desirable result because use of the license erodes the rights of copyright owners. Wixen, however, fails to offer any support for its position or its observation, other than to assert that record clubs fail to adhere to the mechanical licensing process altogether. But failure on the part of some persons to use the license properly is not a reason to erect barriers for others to take advantage of the statutory license. In fact, the Office has a responsibility to promulgate regulations that implement Congress' express intent to allow the use of a musical work for the purpose of making and distributing phonorecords under the terms of the statutory license.

The remaining three commenters, DiMA, Napster and RIAA/NMPA/HFA, all agree that the current regulations do not meet the needs of the new technologies and are in need of revision. In fact, these commenters do not think the proposed changes go far enough, and they encourage the Office to adopt further revisions to streamline and simplify the notice provisions. In addition to the revisions proposed in the initial notice, RIAA/NMPA/HFA propose regulatory language that addresses electronic licensing, eliminates the requirement that certain ownership, officer and director information be provided, and allows service of Notices by regular mail or courier.

DiMA agrees with RIAA/NMPA/HFA in large part but maintains that the current system, even with the proposed changes, does not address the needs of the newly emerging business models. Both it and Napster support electronic filing, but their comments go much further than the changes proposed by the Office or RIAA/NMPA/HFA, in that they urge the Office, to the extent possible, to incorporate the changes set forth in the proposed Music Online Competition Act of 2001 (''MOCA''), proposed in the 107th Congress as H.R. 2724. Specifically, DiMA and Napster would like the Copyright Office to designate a single entity upon which to serve Notices and make royalty payments. In addition, DiMA proposes the creation of a ''safe harbor'' for those who fail to exercise properly the license during the period of uncertainty arising from the administration of the license for digital phonorecord deliveries (''DPDs''). It would also like to see the regulations amended to allow payment on a quarterly rather than a monthly basis and to establish a threshold below which payment would not be required.

These suggestions, however, require statutory changes. For example, the Office has no authority to excuse a licensee's failure to serve a Notice within the statutory time frame, nor does it have the authority to alter the timetable for payment. Section 115(b) of the Copyright Act states that a licensee ''shall, before or within thirty days after making, and before distributing any phonorecords of the work, serve notice of intention to do so on the copyright owner.'' Likewise, section 115(c)(5) specifically requires that ''royalty payments shall be made on or before the twentieth day of each month and shall include all royalties for the month next preceding.'' Moreover, section 115(c)(6) makes clear that upon failure to make payment within thirty days from the date of receipt of a written notice from the copyright owner indicating that payment has not been received, the license will be terminated and further making or distributions pursuant to the license are actionable as acts of infringement. 17 U.S.C. 115 (c)(6).

Notwithstanding the requests to issue rules to modify the law, the Office has found the comments useful and has incorporated many of the commenters' proposals in the rules proposed herein, especially where the proposed changes would facilitate the process for filing Notices to the benefit of both the licensee and the copyright owner.

The proposed rules published today reflect the Office's proposed resolution of the issues raised in this rulemaking proceeding and of the proposals made by the commenters. Because the Office proposes to address one issue raised by commenters but not raised in the earlier notice of proposed rulemaking, and because the Office seeks further comment on one issue addressed below, we are publishing a final notice of proposed rulemaking to seek comments on those two particular issues. Commenters may, of course, address other provisions of the proposed rules as well, but the Office does not

[1] Napster, Inc. subsequently went out of business. The Napster service mark is now used by Roxio, Inc. in connection with an online music service.

anticipate that its determinations on those provisions will change. It is the Office's goal to propound final regulations promptly after the expiration of the comment period.

III. Discussion

1. *Service on Authorized Agents.* Under the proposed amendments, a potential licensee could choose to serve either the copyright owner of the musical work or a duly authorized agent of the copyright owner for purposes of complying with the notice requirements of the section 115 license. In principle, RIAA/NMPA/HFA support such a change, but they contend that the proposed amendment is too restrictive. First, they object to the requirement that the agent must be specifically authorized to grant or administer the particular rights that are being licensed. They note that a compulsory license is conferred automatically, by operation of law, and consequently, a ''copyright owner * * * should have the flexibility to appoint agents that are authorized to receive Notices of Intention and transmit them to the copyright owner, even if such agents are not empowered with discretion to grant or administer rights on a voluntary basis,'' RIAA/NMPA/HFA comment at 5, and propose additional language to cover this contingency.

Second, they contend that a licensee should not be penalized for not knowing the metes and bounds of the agent's authority. To deal with such a case, RIAA/NMPA/HFA seek a change in the proposed regulatory language that would protect the licensee in the event an agent who has no authority to receive the Notice is mistakenly served on behalf of the copyright owner. Specifically, their proposed rule would allow the agent to return the Notice to the licensee who would then serve the Notice on the copyright owner directly within thirty days after receiving the returned original Notice. The rule would further specify the date of the mailing of the original Notice as the date of service for purposes of the section 115 license.

Third, RIAA/NMPA/HFA express concern that the emphasis on an agent being ''duly authorized'' may set a standard for establishing an agency relationship higher than that applied as a matter of agency law.

The need for a more flexible system for notification of use of the section 115 statutory license is evident from the comments received by the Copyright Office. Consequently, the rules proposed today will provide greater flexibility to the copyright owner and to the licensee. They will allow a copyright owner to use an agent to accept the requisite Notices and/or royalty payments accompanied by statements of account, but the rules will not require that the copyright owner use a single agent to perform both functions. The decision to use an agent is left to the discretion of the copyright owner who may wish to use one agent to accept all filings under the section 115 license, including the Notice, the Statements of Account and royalty payments. Alternatively, a copyright owner may choose to use an agent only for the purpose of accepting Notices with the expectation that the licensee will thereafter send all statements of account and royalty payments directly to the copyright owner or to another agent designated by the copyright owner for that purpose.

However, use of multiple agents can create traps for the unwary licensee in the case where an agent has been authorized only to accept Notices and the licensee is unaware of the limits of the agent's authority or assumes incorrectly that, as under the former regulatory scheme, Notices and Statements of Account are served on the same entity. Consequently, the new rules would impose a duty on the copyright owner to have its agent disclose the extent of its authority and to provide each licensee with the information they need to make payment to the proper party and to file the Statements of Account. This approach would allocate to the licensee the responsibility for serving Notices on the proper party, *see* discussion *infra,* section 4, *Risk Assessment,* and would place responsibility for supplying information for making proper payment on the copyright owner, who is in the best position to provide this information. Licensees who make payment in accordance with the information provided by an authorized agent would be deemed to have fully complied with the statutory requirements. A licensee who has served the Notice of Intention upon an agent will be under no obligation to send Statements of Account or royalty payments to the agent or the copyright owner until the agent notifies the licensee where to send the Statements of Account and payments. However, once the agent sends such notification, the licensee would be required to send Statements of Account and royalty payments covering the intervening period.

Such an approach creates the risk that a licensee may be able temporarily to delay sending Statements of Account and royalty payments to a copyright owner when the agent has failed to advise the licensee where to send them, but this appears to be a necessary result of the system proposed by copyright owners that would permit them to limit the authority of the agent to receipt of Notices of Intention. The Office also seeks comment on an alternative approach that would require the licensee to send Statements of Account and royalty payments to the agent to whom the Notice of Intention was sent unless and until the agent or the copyright owner advises the licensee that the statements and payments should be sent elsewhere.

In adopting the new approach, the Office also considered carefully the rule proposed by RIAA/NMPA/HFA that would protect a licensee in the event the Notice is incorrectly served on an agent with no authority to act on behalf of the copyright owner for purposes of the compulsory license. Under the proposed RIAA/NMPA/HFA rule, a licensee would incur no liability for a misdirected Notice provided that the licensee served the Notice properly on the copyright owner within thirty days after receiving the returned Notice. Moreover, the proposed rule would have specified the date of the mailing of the original Notice as the date of service for purposes of providing notice to the copyright owner.

The rule change proposed by RIAA/NMPA/HFA, however, would be contrary to law in at least two ways. First, the proposed rule would not insure notice in all situations. It would only require a licensee to serve a Notice directly on the copyright owner in the case where a misdirected Notice has been returned to the licensee. It would not provide for any means to notify the copyright owner in the case where a Notice has been misdirected and not returned, thus, failing to meet the notice requirement.

Second, the proposed rule would extend the period for serving a Notice beyond the period set forth in the law. The statute requires that notice be served on the copyright owner ''before or within thirty days after making, and before distributing any phonorecords of the work,'' 17 U.S.C. 115(b)(1). Yet, the RIAA/NMPA/HFA rule would expand the period for serving a Notice on the copyright owner, by resetting the clock for the thirty-day period for serving the Notice on the copyright owner to the date a misdirected Notice is returned to the licensee. RIAA/NMPA/HFA realize that this proposal could contravene the statutory time frame for serving notice and attempt to solve the problem by having the Office adopt a new rule, specifying the mailing date of the original Notice as the date of service.

But this approach is flawed because it ignores the fact that the law requires that a person wishing to use the compulsory license ''serve notice of intention to do so on the copyright owner.'' 17 U.S.C. 115(b)(1). Service on someone other than the copyright owner or the owner's authorized agent, even when done in good faith, is not service on the copyright owner. For the foregoing reasons, the RIAA/NMPA/HFA proposed rule has not been adopted.

We have also considered RIAA/NMPA/HFA's suggestion to eliminate the requirement that an agent be ''duly authorized'' to act on behalf of the copyright owner for the purpose of administering the reproduction and distribution rights of the copyright owner and agree that it is not necessary for an agent to be authorized to this extent, if the agent will only be accepting Notices to use the section 115 license, *see* 37 CFR 201.18(a)(4), and/or accepting Statements of Account and royalty payments, *see* 37 CFR 201.19(a)(4) and (e)(7)(i). However, the agent must have the authority to accept the Notices and/or Statements of Account and royalty payments. RIAA/NMPA/HFA also express concern that the requirement that the agent be ''duly authorized'' might be interpreted as setting a standard of authority different from that which would apply as a matter of agency law. They propose that persons wishing to use the statutory license be permitted to serve Notices of Intention on agents ''with authority'' to receive the Notice of Intention. The Office agrees that service upon an agent who has authority to accept Notices of Intention on behalf of a copyright owner should be sufficient. For this reason, the rules will require that service be made on the copyright owner or on an agent with authority to receive the Notice, but will not include the original proposed requirement that the agent be fully authorized to administer the reproduction and distribution rights.

Napster and DiMA, like RIAA/NMPA/HFA, support the adoption of a rule that would allow service on an agent, but they offer a different approach to the problem. They propose that service be made upon a single agent to be designated by the Office in a procedure similar to that used to designate SoundExchange as the receiving agent for all royalty fees for the performance of sound recordings under the statutory section 114 license. *See* 63 FR 25394 (May 8, 1998); 67 FR 45239 (July 8, 2002).

We recognize the potential benefit that such a rule would have for licensees, but we find no authority in the statute to promulgate such a rule. In fact, Napster's and DiMA's suggestion that the Copyright Office designate a single agent for purposes of receiving the Notices is contrary to the express language in the law. Section 115(b)(1) requires that a licensee serve a Notice to use the compulsory section 115 on the copyright owner and allows filing of the Notice with the Office only in the event the ''registration or other public records of the Copyright Office do not identify the copyright owner and include an address at which notice can be served.'' Thus, there can be no serious dispute that the law allows service of the Notice with the Copyright Office only in very limited circumstances. Notice to either the Copyright Office or a single agent designated by the Copyright Office would alter the structure set forth in the law and, hence, it is clearly not permissible. Moreover, while the advantage of such an approach to licensees is apparent, copyright owners presumably would consider themselves disadvantaged by such an approach because they would no longer receive direct notification that their works are being used by particular licensees. However, there is no reason that a copyright owner cannot affirmatively designate an agent to act on his or her behalf for purposes of receiving the Notices and the monthly statements of account, and so the proposed rules have been amended accordingly.

RIAA/NMPA/HFA also suggest a technical correction to make clear that service may be accomplished by either serving the copyright owner directly or an agent of the copyright owner. We agree that the final rules should be clear that service on either the copyright owner or its agent is sufficient, and we have revised the proposed amendment accordingly.

2. *Service by Regular Mail or Courier.* RIAA/NMPA/HFA suggest that the Office amend its rules to allow service by means other than certified mail or registered mail, including first class mail, airmail, express mail, or by reputable courier. They maintain that service by certified mail or registered mail is both needlessly expensive and time consuming. They also note that service by regular mail is an accepted practice in other legal contexts and that service by a reputable courier, *e.g.*, Federal Express, DHL and UPS, is a widely accepted practice in the commercial business community.

The Office agrees with the proposed suggestion and proposes to amend its regulations to allow the licensee to choose the method of service. The advantage to using certified or registered mail, of course, is the creation of an evidentiary record to document the licensee's attempt to serve the Notice on the copyright owner in a timely manner. However, there is no reason to compel a licensee to use a particular method provided that the licensee assumes the burden of proving that the Notice was served in a timely manner. As before, where the licensee elects to serve the Notice by certified or registered mail on the copyright owner at the last address for the copyright owner shown in the records of the Copyright Office, the date the original Notice was sent, as documented by either a certified or registered mail receipt, shall be considered the date of service. Moreover, the Office will accept the date of attempted delivery by a reputable courier as the date of service, provided that documentation from the courier identifying the date of attempted delivery is provided. Alternatively, in the case where the licensee chooses to serve the Notice by means other than certified or registered mail or a reputable courier, *e.g.*, first-class mail, the licensee should have the burden of demonstrating that service was timely. This change would not alter in any way the licensee's obligation to serve the Notice on the copyright owner or the copyright owner's agent in the prescribed manner.

3. *Service to Known Address.* Section 115(b)(1) of the Copyright Act requires the compulsory licensee to serve the required Notice on the copyright owner. Under the current regulations, the Notice must be sent to the copyright owner identified in the registration records or other public records of the Copyright Office at the last address listed in these records in order to meet the notice requirements. Users have argued and the Office agrees that service on the copyright owner at the address listed in the Copyright Office records places a tremendous burden on a potential licensee who hopes to use the license to reproduce multiple works in those cases where the public records do not reflect the most current information and the licensee knows the current address for the copyright owner or the agent for the copyright owner who handles the reproduction and distribution rights. A licensee may have such information based upon a course of dealing with the copyright owner or because the copyright owner has publicized the information.

For that reason, the Office proposed an amendment to its regulations that would give the potential licensee an option to serve the copyright owner or his or her agent at a current address instead of requiring that the Notice be served on the copyright owner at the

address listed for that copyright owner in the public records of the Copyright Office. RIAA/NMPA/HFA support this change, recognizing that many copyright owners and licensees have an ongoing business relationship and knowledge of current information not reflected in the public records of the Copyright Office. They offer no proposed changes to this provision.

DiMA, on the other hand, proposes a more centralized approach whereby the user sends the Notices to a limited number of centralized entities such as the Copyright Office, or an agent or agents designated by the Copyright Office, instead of the copyright owner or his designated agent. DiMA comment at 4. This approach would, as DiMA points out, reduce expense and eliminate the problems that arise when a copyright owner refuses to accept certified mail filings.

However, as explained earlier, the only time it is appropriate for a licensee to file a Notice with the Copyright Office is when ''the registration or other public records of the Copyright Office do not identify the copyright owner and include an address at which notice can be served.'' 17 U.S.C. 115(b)(1). Since the statute clearly sets forth the conditions under which a licensee can file its Notice with the Office, the proposed changes offered by DiMA to allow all Notices to come to the Copyright Office cannot be adopted. Such a rule would be an impermissible expansion of the duties and responsibilities delegated to the Copyright Office under the law. Therefore, the Copyright Office proposes to adopt a less expansive rule than the one proposed by DiMA which would allow a licensee to serve the copyright owner or his or her agent at an address other than the one listed in the Copyright Office records. If the licensee believes that he or she has more current or accurate information than the information in the Copyright Office records, he or she may serve the Notice using that information. However, as discussed below, the licensee bears the risk if his or her information proves to be inaccurate.

4. *Risk Assessment.* In the event the person or entity seeking to obtain the license chooses not to serve the copyright owner at the address for the copyright owner noted in the public records in the Copyright Office and mistakenly sends the Notice to a person or entity who is not the actual copyright owner, or the agent with authority to accept the Notice, or to an incorrect address, the licensee bears all risk associated with the misdirected service, including the likelihood that the compulsory license will not cover any activity taken by the licensee under a mistaken assumption that the Notice was properly served.

DiMA finds this approach too harsh and suggests that mistakes by a licensee's agent should not be imputed to the principal. It prefers a rule that would not bar a licensee from obtaining a statutory license for future use of the works in the case where the licensee reasonably relied on the integrity of the agent to effectuate proper notice. While the problem outlined is a serious concern, the Copyright Office has no authority to limit liability in the case where a Notice is improperly served. *See* 63 FR 25394 (May 8, 1998) (rejecting proposed term in rate setting proceeding that would have limited liability of a statutory licensee to acts which materially breach the statutory license terms).

5. *Service of Notice by Electronic Means.* RIAA/NMPA/HFA, DiMA and Napster requested that the Office amend its rules to permit a licensee to serve a Notice electronically. RIAA/NMPA/HFA note that service of a Notice in a digital format will reduce the potential for loss of information, prove less burdensome for both the licensee and the copyright owner (at least in those cases where the licensee is filing a Notice for use of multiple works), and provide a convenient and easy way to manage the data. To this end, RIAA/NMPA/HFA propose that the rules be amended to require service by electronic means when the Notice lists titles of more than 50 works and that any licensee be allowed to do so in these circumstances.

The Copyright Office fully supports the concept of service by electronic means and is cognizant of the many advantages it would provide to both licensees and copyright owners. Therefore, it is proposed that the rules be amended to provide an option for serving a Notice in a digital format. If a copyright owner/agent can accommodate a licensee who wishes to submit the Notice in a digital format and chooses to receive the Notice in this manner, then the Notice may be so served. Therefore, the Office proposes to adopt the RIAA/NMPA/HFA proposal to allow a licensee to submit a Notice to a copyright owner or its agent by means of an electronic transmission when the copyright owner or agent has determined that it can accommodate such submissions. The proposed rules would allow each copyright owner or agent acting on behalf of a copyright owner to establish written guidelines for making electronic submissions. All guidelines for making electronic submissions must be in writing and available to the public. An electronic submission made in this manner would be deemed to comply fully with the regulations for providing adequate notice to the copyright owner.

However, the Office recognizes that in some cases, an option to serve Notices electronically may be insufficient, and copyright owners may have good reason to insist upon electronic filing. As RIAA/NMPA/HFA assert, a Notice of Intention that lists a large number of works may be difficult to process and handle if it is submitted only in hard copy, especially if it is served on an agent for a number of copyright owners and lists the works of a number of copyright owners. For that reason, the Office proposes a solution somewhat different than, but modeled upon, the RIAA/NMPA/HFA suggestion to require an electronic filing in every instance where the licensee intends to file a Notice to license 50 works or more. Rather than require an electronic submission in every such case, the proposed rule would give a copyright owner or agent who receives a Notice of Intention that designates more than 50 works the right to demand that the person submitting the notice resubmit a list of the works identified in the notice in an electronic format. A list of the designated works would then have to be resubmitted in electronic format within 30 days of the licensee's receipt of the demand. As RIAA/NMPA/HFA proposed, the notice could be in any electronic format in wide use, giving licensees wide flexibility whether to use, for example, a particular word processing or spreadsheet program to prepare the notice.

The Office has also considered whether to allow a licensee to file a Notice in the Copyright Office in an electronic format. At this time, the Copyright Office is not prepared to accept electronic filings because it does not have in place the systems that would accommodate such filings. It is anticipated that such filings will be accepted in the future. For the time being, however, in the case where the licensee intends to license a high volume of musical works under section 115 and would endure significant hardships if required to submit the Notices under the standard practices, the licensee may contact the Licensing Division of the Copyright Office to inquire whether special arrangements can be made for submission of the Notice electronically.

6. *Multiple Works.* Another way to increase the efficiencies associated with the filing of a Notice is to allow the listing of multiple works on a single

Notice in the case where the works are owned by the same copyright owner. For this reason, the Office proposed to amend its rules to eliminate the requirement that a separate Notice be served or filed for each nondramatic musical work embodied, or intended to be embodied, in phonorecords made under the compulsory license. *See* 37 CFR 201.18(a)(2).

RIAA/NMPA/HFA support the Office's proposal to allow the listing of multiple works on a single Notice in the case where a single copyright owner has an interest in each of the listed works. DiMA also supports the Office's proposal to allow a licensee to list multiple works on a single Notice, but then suggests that, in the case of an electronic submission, the Office allow a licensee ''to file a single database notice including multiple works by multiple owners.'' DiMA Comment at 5. DiMA postulates that a single database Notice would make it demonstrably easier to manage the information. RIAA/NMPA/HFA agree with DiMA on this point.

The Office recognizes the efficiencies for the licensee associated with DiMA's suggestion but it has chosen not to adopt this approach as a general rule at this time. Instead, the proposed rule requires that a Notice list only the works of the copyright owner being served but, in the case of a Notice served on an agent, the Notice may list the works of multiple copyright owners as long as all the works listed on the Notice are owned or co-owned by copyright owners who have authorized the agent to accept Notices on their behalf. The Office is taking this approach because section 115, which requires service of a Notice on the copyright owner, does not anticipate that the copyright owner should have to search a licensee's universal database Notice to determine which of the copyright owner's works a licensee intends to use pursuant to the compulsory license.

However, in the case where the copyright owner or agent has the ability to sort the information and is willing to accept a database Notice submitted electronically, the Office sees no reason to prohibit the use of such Notice and require in its place the more particularized Notice outlined in the proposed regulations. Thus, the proposed rule leaves it to the discretion of the licensee and the copyright owner (or agent) to determine whether a database Notice listing multiple works by multiple owners is acceptable to both the licensee and the copyright owner/agent. In such situations, the licensee and the copyright owner/agent should work out the details associated with formatting and transmittal of the information.

The proposed amended regulations also would require that in the case where a licensee files a Notice listing multiple titles with the Copyright Office, the licensee shall pay the $12 filing fee for each title. The filing fee will cover the administrative costs associated with separately processing the information for each title in the Notice. There was no opposition to this provision.

7. *Content.* The current regulations do not require that the licensee list the copyright owner's name on the Notice because a separate Notice for each work was served directly on the copyright owner, who has no need to be informed of his or her identity. Under the proposed amended rules, though, this would no longer be the case. A Notice listing multiple works could be served on an agent working on behalf of multiple copyright owners. Under these circumstances, the Notice would have to identify the copyright owner of each work, and so an amendment was proposed to add this information to the Notice.

In response to this proposed change, RIAA/NMPA/HFA assert that the need to identify the copyright owner arises only when the Notice is not served directly on the copyright owner and suggest that the requirement apply only to Notices not served on a copyright owner directly. In theory we agree, and recognize that it may be redundant to include the name of the copyright owner on the Notice in those instances where the Notice is served directly on the copyright owner. Nevertheless, we recognize that all such Notices do not reach their intended destination. In these cases, the Notices may end up being filed with the Copyright Office and would have to include the name of the copyright owner. Such Notices should be complete on their face and not require any further work on the part of the staff or the public to identify the copyright owner. Moreover, requiring that the Notice contain the name of the copyright owner will eliminate the need to create multiple notice formats for service on different entities. Consequently, the proposed rules require the identification of the copyright owner on all Notices.

The Office also proposed adding a requirement that, in the case where a person files the Notice with the Copyright Office pursuant to § 201.18(e)(1),[2] the Notice include an affirmative statement that the registration records or other public records of the Copyright Office have been searched and that the name and address of the copyright owner is not listed in these records.[3] The purpose of this amendment is to provide sufficient information to the Copyright Office so that it can ascertain whether the Notice has been properly filed. Moreover, this requirement will serve as a reminder to the potential licensee that he or she has an obligation to search the public records of the Copyright Office before filing the required Notice with this Office. Napster, however, expressed a concern that the additional requirement may be used against a licensee as a means to oppose or restrict access to the compulsory license. We understand this concern, but the rules allow a licensee to file a Notice with the Office only when the registration records or other public records of the Copyright Office do not identify the copyright owner of the work and include an address, or when the Notice is returned to the sender because the copyright owner is no longer located at that address or refused to accept delivery. Consequently, the Office does not find a requirement to affirmatively state that the licensee has completed the obligatory search to be an onerous one and proposes to require the licensee to affirmatively state that the Office records have been searched and that the records do not include the name and address of the copyright owner.

In addition, RIAA/NMPA/HFA has asked the Office to ''eliminate the requirement that a licensee provide certain information concerning its ownership, officers and directors, and substitute greatly simplified requirements that the licensee (1) provides the name and title of the licensee's CEO, managing partner or the like and (2) identify the entity expected to be actively engaged in the business of making and distributing, or authorizing the making and distribution of, phonorecords if the licensee is a holding company, trust or other passive entity not actively engaged in such business.'' While the current requirements presumably are intended to benefit copyright owners, *see* 37 CFR 201.18(c)(1)(iii) and 201.19(f)(3)(iii), the fact that NMPA and HFA propose that it be eliminated suggests that copyright owners would not be harmed by removing it. In fact, RIAA/NMPA/HFA

[2] This rule has been redesignated as § 201.18(f)(1) under the proposed rules announced in this document.

[3] Newly designated § 201.18(f)(1) provides that if the registration records or other public records of the Copyright Office do not identify the name and address of the copyright owner of a particular work, a Notice of Intention with respect to that work may be filed with the Copyright Office.

maintain that the current regulations are not tailored to provide meaningful information to the copyright owners and may well impose a needless burden on licensees. In light of these assertions by both copyright owners and users, the Office proposes to remove these requirements from the rules; but because the proposal was not included in the initial Notice of Proposed Rulemaking, the Office is seeking public comment on these issues for consideration in preparing the final rule.

8. *Signature.* The Office proposes to further amend its rule to allow a duly authorized agent of the intended licensee to sign the Notice. An agent who signs on behalf of the licensee would have to be specifically authorized to execute the Notice on behalf of the licensee. A concise statement of authorization to that effect would have to be included in the Notice.

RIAA/NMPA/HFA raise concerns that the proposed regulatory language may ''require specific resolution of a licensee's board of directors or a certificate evidencing the agent's authority,'' and has suggested alternative language to make clear that such procedures are not required. Specifically, they have asked the Office to remove the regulatory language that requires the agent to be specifically authorized to execute the Notice and a concise statement of authorization to that effect and in its place require that the Notice include only an affirmative statement that the agent is authorized to execute the Notice on behalf of the licensee. Since the purpose of the rule is to insure that the person signing the Notice is either the licensee or a duly authorized agent and the proposed changes accomplish this goal without using language that would impose unintended requirements on a licensee or its board of directors, the Office proposes to amend its regulation to incorporate the proposed changes offered by RIAA/NMPA/HFA.

The Copyright Office also intends to amend its regulations regarding signature to address the issues and problems associated with making service electronically. Currently, there are no regulations pertaining to electronic service, but as explained earlier, the Office has considered the comments offered on this issue and proposes to adopt regulations that provide an option for electronic service. Since this option is voluntary and the Office has not requested comment on this issue—nor has any party who advocates and supports electronic service offered any suggestions as to the appropriate methodology to be employed to verify that an electronic submission will be made under the authority of the appropriate person—the regulations will not specify how a submission should be authenticated. However, the Office intends to require that, in the case where a submission is made electronically, a licensee and a copyright owner/agent develop mutually acceptable protocols to verify the authenticity of the person serving the Notice.

9. *Harmless errors.* The statute requires that a person or entity who intends to use the compulsory license give notice to the copyright owner of the nondramatic musical work before or within thirty days after making, and before distributing any phonorecords of the work. The rules outline specific elements that are to be included in each Notice. This information helps the copyright owner identify which of his or her works are being used under the license. However, errors may occur in the preparation of these Notices, many of which do not affect the legal sufficiency of the Notice. For this reason, the Office proposes to adopt a new paragraph (g) to § 201.18 to clarify that such errors will be considered harmless and will not affect the validity of the Notice.

As stated in the initial notice of proposed rulemaking, the Office does not anticipate that it will have any role in resolving disputes about whether an error in a Notice is harmless.

RIAA/NMPA/HFA support this change and offer no further changes. DiMA also agrees with the change, although it suggests that the rule does not adequately address the major problems with the current system concerning service and payment. The Office agrees with DiMA's observation, but notes that the proposed change is meant only to clarify that a Notice need not be perfect to give proper notice of use under the law. Nor is the rule to be construed as a ''safe harbor'' for a licensee who fails to serve adequate notice on the proper copyright owner in a timely manner.

10. *Fee for filing Notices of Intention.*[4] Section 201.18(e)(3) of 37 CFR provides, in pertinent part, that when a Notice of Intention is filed with the Office because the copyright owner is no longer at the last address indicated in the Copyright Office's records or has refused to accept delivery, no filing fee will be required. The Office proposed to amend § 201.18(e) to remove this provision. The fee charged for the filing of a Notice, like most other Copyright Office fees, is based upon the Office's costs in performing the service. *See* Fees and Registration of Claims to Copyright, 64 FR 29518 (June 1, 1999). Thus, the Office intends to amend its rules to require a filing fee in each instance where the Notice is filed with the Copyright Office without regard to the licensee's reason for filing the Notice with the Office.

While filing a Notice listing multiple titles simplifies the process for licensees, the Office still must index each title included on the Notice, thereby incurring costs for each title. The current cost for filing a Notice of Intention is $12. This fee may be changed only after the Register has studied the costs incurred by the Copyright Office in connection with the filing and has submitted the proposed change in the fee to Congress, which has 120 days to disapprove the change in fee. 17 U.S.C. 708(a)(5), (b). The Register will review the cost of processing multiple-title Notices and will present a proposal to modify this fee to Congress. Meanwhile, however, because the $12 fee would clearly be inadequate to cover the costs of processing Notices of Intention containing large numbers of titles, the proposed regulation will provide that for purposes of calculating fees, a Notice which lists multiple works shall be considered a composite filing of multiple Notices, and that fees shall be paid accordingly (*i.e.*, a separate $12 fee shall be paid for each work listed in the Notice). It is anticipated that this fee for the filing of multiple-title Notices will be decreased significantly when the Register makes her fee proposal to Congress.

11. *Certificate of Filing.*[5] Section 201.18(e)(1) of 37 CFR provided, in pertinent part, that ''[u]pon request and payment of the fee specified in § 201.3(e), a Certificate of Filing [of a Notice of Intention] will be provided to the sender.'' This Certificate of Filing is in addition to a written acknowledgment of receipt and filing that the Office routinely provides to a person who files a Notice.

The Office has reexamined this rule and has determined that the issuance of a Certificate of Filing serves no useful purpose, given that the Office routinely provides a written acknowledgment of receipt and filing. Moreover, a person who wishes to obtain official certification of the filing of a Notice of Intention may do so pursuant to the

[4] The citations to 37 CFR 201.18(e) in this section refer to the rule prior to its redesignation under the proposed rules announced in this document.

[5] The citations to 37 CFR 201.18(e)(1) in this section refer to the rule prior to its redesignation under the proposed rules announced in this document.

existing regulations governing certified copies of Copyright Office records. *See* 37 CFR 201.2(d).

Because there is no identifiable reason to incur the extra time and expense associated with the issuance of a Certificate of Filing for each Notice that is filed with the Copyright Office, the Office intends to delete that portion of § 201.18(e)(1) that provides for a Certificate of Filing from the Licensing Division of the Copyright Office.

12. *Other issues. a. Safe harbor.* Napster and DiMA advocate the creation of a safe harbor to avoid any copyright infringement liability which may occur during the time it takes to implement any desired electronic systems. In essence, these entities are asking for a rule that would hold harmless any past infringing activity in the case where an online service has not complied with the rules for obtaining a compulsory license because of the difficulties associated with filing multiple Notices or due to a dispute between the publishers and the services over the need for the license. Napster at 7; DiMA at 5 n.6. The Office has no authority to promulgate regulations that would effectively absolve a compulsory licensee from liability for past errors or inadvertent errors under the new procedures. *See* 63 FR 25394 (May 8, 1998) (rejecting proposed term in rate setting proceeding that would have limited liability of a statutory licensee to acts which materially breach the statutory license terms).

b. Database. DiMA asks the Office to establish a complete and up-to-date electronic database of all musical works registered with the Copyright Office that are still under copyright protection, arguing that an electronic database will make it easier for all companies to search the registration files. Certainly, the creation of an all-inclusive database is a laudable goal and deserves serious consideration, but it is not the subject of this proceeding nor a realistic goal at this time. Consequently, the Office has proposed modest changes to its regulations that can be implemented immediately to the benefit of those companies that wish to utilize the statutory license in the immediate future. If needed, further amendments may be considered at a future time.

c. Extension of current mechanical licenses to cover DPDs. DiMA suggests that the Office promulgate ''a minimal set of regulations for the common situation in which online entities will be distributing digital phonorecord deliveries of sound recordings already covered by a mechanical license.'' DiMA offers little explanation for its suggestion, which may be intended to permit someone who intends to use the section 115 DPD license to rely upon a previously served Notice of Intention to use the section 115 mechanical license. The benefits of such a provision for licensees are apparent, but copyright owners, who have had no opportunity thus far to respond to DiMA's proposal, may well have compelling reasons to oppose it. The Office is unwilling to consider such a proposal, which was not included in the initial notice of proposed rulemaking, at this time without the benefit of further comment from both copyright owners and users of the compulsory license. The Office invites elaboration on this proposal by DiMA and comment on this proposal by copyright owners and other users of the compulsory license. In light of the intention to publish a final rule shortly after the close of the comment period, it is highly unlikely the final rule promulgated in this proceeding will include such an innovation, but comments received on this issue will be considered by the Office for possible future action.

d. Royalty Payments and Statements of Account. DiMA seeks a regulation that would allow the Copyright Office or an agent designated by the Copyright Office to receive payments of royalty fees and statements of accounts. We recognize that DiMA's suggestion offers efficiencies for licensees, but the Copyright Office has no authority to adopt the proposed payment mechanism through a notice and comment proceeding. First, the Copyright Office collects royalty fees only in three instances and in each case Congress has expressly delegated the responsibility to the Office. *See* 17 U.S.C. 111(d)(2), 119(b)(1), and 1005. Without similar statutory authority to collect royalty fees under section 115, the Copyright Office cannot promulgate regulations directing or permitting a compulsory licensee to make monthly royalty payments directly to the Copyright Office. Second, the Copyright Office cannot unilaterally designate an entity as an agent to receive these fees.

In a past proceeding to set rates and terms for the section 114 license, the parties to that proceeding proposed a term to the Copyright Arbitration Royalty Panel (''CARP''), the administrative entity with the authority and responsibility for adopting terms of payment for that license, designating a single collective for the purpose of receiving and distributing the royalty fees. Recognizing the administrative efficiencies for the interested parties and after finding that it was not contrary to law for the parties to the section 114 rate setting proceeding to agree upon a collective to receive and distribute the royalty payments on behalf of all affected copyright owners, the Librarian adopted the stipulated term of payment. *See* 63 FR 25394 (May 8, 1998). However, in that context the Librarian of Congress has the power to establish the terms of royalty payments. *See* 17 U.S.C. 114(f). The Office has no such authority under section 115. Moreover, because this rulemaking is directed only toward amending the current regulations in order to streamline the procedures for serving Notices of Intention and Statements of Account, the Office finds DiMA's proposal to designate a collective for the purpose of collecting the section 115 royalties beyond the scope of this proceeding.

DiMA has also asked the Copyright Office to adopt regulations to permit quarterly rather than monthly filing of the statements of account and to permit the withholding of fees below a certain threshold level. It cites the administrative costs associated with the distribution of *de minimis* fees and speculates that on-line music services may decide not to offer works of minor interest because the costs of administering the license for these works is disproportionately high compared to the royalties to be paid. The schedule of payment, however, is not an appropriate subject for a rulemaking proceeding. Section 115(c)(5) requires a licensee to make monthly payments. The only way to alter the schedule for payment is through an amendment to the law. No agency has the authority to promulgate regulations that alter requirements set forth in the law.

e. Filings with the Copyright Office. DiMA suggests that the Office draft regulations that would allow licensees to offset costs associated with filing Notices with the Office in those situations where the copyright owner wrongly refuses service. It suggests that licensees might be allowed to deduct the administrative costs associated with such filings from the royalty fees. Again, this is a subject beyond the scope of the current rulemaking proceeding and, thus, it will not be considered at this time.

List of Subjects in 37 CFR Part 201

Copyright.

Proposed Regulation

In consideration of the foregoing, the Copyright Office proposes to amend part 201 of 37 CFR as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Section 201.18 is revised to read as follows:

§ 201.18 Notice of intention to obtain a compulsory license for making and distributing phonorecords of nondramatic musical works.

(a) *General.* (1) A ''Notice of Intention'' is a Notice identified in section 115(b) of title 17 of the United States Code, and required by that section to be served on a copyright owner or, in certain cases, to be filed in the Copyright Office, before or within thirty days after making, and before distributing any phonorecords of the work, in order to obtain a compulsory license to make and distribute phonorecords of nondramatic musical works.

(2) A Notice of Intention shall be served or filed for nondramatic musical works embodied, or intended to be embodied, in phonorecords made under the compulsory license. A Notice of Intention may designate any number of nondramatic musical works, provided that the copyright owner of each designated work or, in the case of any work having more than one copyright owner, any one of the copyright owners is the same and that the information required under paragraphs (d)(1)(i)–(iv) of this section does not vary. For purposes of this section, a Notice which lists multiple works shall be considered a composite filing of multiple Notices and fees shall be paid accordingly if filed in the Copyright Office under paragraph (f) of this section (*i.e.*, a separate fee, in the amount set forth in § 201.3(e)(1), shall be paid for each work listed in the Notice).

(3) For the purposes of this section, the term copyright owner, in the case of any work having more than one copyright owner, means any one of the co-owners.

(4) For the purposes of this section, service of a Notice of Intention on a copyright owner may be accomplished by means of service of the Notice on either the copyright owner or an agent of the copyright owner with authority to receive the Notice. In the case where the work has more than one copyright owner, the service of the Notice on any one of the co-owners of the nondramatic musical work or upon an authorized agent of one of the co-owners identified in the Notice of Intention shall be sufficient with respect to all co-owners. Notwithstanding paragraph (a)(2) of this section, a single Notice may designate works not owned by the same copyright owner in the case where the Notice is served on a common agent of multiple copyright owners, and where each of the works designated in the Notice is owned by any of the copyright owners who have authorized that agent to receive Notices.

(5) For purposes of this section, a copyright owner or an agent of a copyright owner with authority to receive Notices of Intention may make public a written policy that it will accept Notices of Intention to make and distribute phonorecords pursuant to 17 U.S.C. 115 which include less than all of the information required by this section, in a form different than required by this section, or delivered by means (including electronic transmission) other than those required by this section. Any Notice provided in accordance with such policy shall not be rendered invalid for failing to comply with the specific requirements of this section.

(6) For the purposes of this section, a digital phonorecord delivery shall be treated as a type of phonorecord configuration, and a digital phonorecord delivery shall be treated as a phonorecord manufactured, made, and distributed on the date the phonorecord is digitally transmitted.

(b) *Agent.* An agent who has authority to accept Notices of Intention in accordance with paragraph (a)(4) of this section and who has received a Notice of Intention on behalf of a copyright owner shall provide within two weeks of the receipt of that Notice of Intention the name and address of the copyright owner or its agent upon whom the person or entity intending to obtain the compulsory license shall serve Statements of Account and the monthly royalty in accordance with § 201.19(a)(4).

(c) *Form.* The Copyright Office does not provide printed forms for the use of persons serving or filing Notices of Intention.

(d) *Content.* (1) A Notice of Intention shall be clearly and prominently designated, at the head of the notice, as a ''Notice of Intention to Obtain a Compulsory License for Making and Distributing Phonorecords,'' and shall include a clear statement of the following information:

(i) The full legal name of the person or entity intending to obtain the compulsory license, together with all fictitious or assumed names used by such person or entity for the purpose of conducting the business of making and distributing phonorecords;

(ii) The telephone number, the full address, including a specific number and street name or rural route of the place of business, and an e-mail address, if available, of the person or entity intending to obtain the compulsory license, and if a business organization intends to obtain the compulsory license, the name and title of the chief executive officer, managing partner, sole proprietor or other person similarly responsible for the management of such entity. A post office box or similar designation will not be sufficient for this purpose except where it is the only address that can be used in that geographic location.

(iii) The information specified in paragraphs (d)(1)(i) and (ii) of this section for the primary entity expected to be engaged in the business of making and distributing phonorecords under the license or of authorizing such making and distribution (for example: a record company or digital music service), if an entity intending to obtain the compulsory license is a holding company, trust or other entity that is not expected to be actively engaged in the business of making and distributing phonorecords under the license or of authorizing such making and distribution;

(iv) The fiscal year of the person or entity intending to obtain the compulsory license. If that fiscal year is a calendar year, the Notice shall state that this is the case;

(v) For each nondramatic musical work embodied or intended to be embodied in phonorecords made under the compulsory license:

(A) The title of the nondramatic musical work;

(B) The name of the author or authors, if known;

(C) A copyright owner of the work, if known;

(D) The types of all phonorecord configurations already made (if any) and expected to be made under the compulsory license (for example: Single disk, long-playing disk, cassette, cartridge, reel-to-reel, a digital phonorecord delivery, or a combination of them);

(E) The expected date of initial distribution of phonorecords already made (if any) or expected to be made under the compulsory license;

(F) The name of the principal recording artist or group actually engaged or expected to be engaged in rendering the performances fixed on phonorecords already made (if any) or expected to be made under the compulsory license;

(G) The catalog number or numbers, and label name or names, used or expected to be used on phonorecords already made (if any) or expected to be made under the compulsory license; and

(H) In the case of phonorecords already made (if any) under the

compulsory license, the date or dates of such manufacture.

(vi) In the case where the Notice will be filed with the Copyright Office pursuant to paragraph (f)(3) of this section, the Notice shall include an affirmative statement that with respect to the nondramatic musical work named in the Notice of Intention, the registration records or other public records of the Copyright Office have been searched and found not to identify the name and address of the copyright owner of such work.

(2) A ''clear statement'' of the information listed in paragraph (d)(1) of this section requires a clearly intelligible, legible, and unambiguous statement in the Notice itself and without incorporation by reference of facts or information contained in other documents or records.

(3) Where information is required to be given by paragraph (d)(1) of this section ''if known'' or as ''expected,'' such information shall be given in good faith and on the basis of the best knowledge, information, and belief of the person signing the Notice. If so given, later developments affecting the accuracy of such information shall not affect the validity of the Notice.

(e) *Signature.* The Notice shall be signed by the person or entity intending to obtain the compulsory license or by a duly authorized agent of such person or entity.

(1) If the person or entity intending to obtain the compulsory license is a corporation, the signature shall be that of a duly authorized officer or agent of the corporation.

(2) If the person or entity intending to obtain the compulsory license is a partnership, the signature shall be that of a partner or of a duly authorized agent of the partnership.

(3) If the Notice is signed by a duly authorized agent for the person or entity intending to obtain the compulsory license, the Notice shall include an affirmative statement that the agent is authorized to execute the Notice of Intention on behalf of the person or entity intending to obtain the compulsory license.

(4) If the Notice is served electronically, the person or entity intending to obtain the compulsory license and the copyright owner shall establish a procedure to verify that the Notice is being submitted upon the authority of the person or entity intending to obtain the compulsory license.

(f) *Filing and service.* (1) If the registration records or other public records of the Copyright Office identify the copyright owner of the nondramatic musical works named in the Notice of Intention and include an address for such owner, the Notice may be served on such owner by mail sent to, or by reputable courier service at, the last address for such owner shown by the records of the Office. It shall not be necessary to file a copy of the Notice in the Copyright Office in this case.

(2) If the Notice is sent by mail or delivered by reputable courier service to the last address for the copyright owner shown by the records of the Copyright Office and the Notice is returned to the sender because the copyright owner is no longer located at the address or has refused to accept delivery, the original Notice as sent shall be filed in the Copyright Office. Notices of Intention submitted for filing under this paragraph (f)(2) shall be submitted to the Licensing Division of the Copyright Office, shall be accompanied by a brief statement that the Notice was sent to the last address for the copyright owner shown by the records of the Copyright Office but was returned, and may be accompanied by appropriate evidence that it was mailed to, or that delivery by reputable courier service was attempted at, that address. In these cases, the Copyright Office will specially mark its records to consider the date the original Notice was mailed, or the date delivery by courier service was attempted, if shown by the evidence mentioned above, as the date of filing. An acknowledgment of receipt and filing will be provided to the sender.

(3) If, with respect to the nondramatic musical works named in the Notice of Intention, the registration records or other public records of the Copyright Office do not identify the copyright owner of such work and include an address for such owner, the Notice may be filed in the Copyright Office. Notices of Intention submitted for filing shall be accompanied by the fee specified in § 201.3(e). A separate fee shall be assessed for each title listed in the Notice. Notices of Intention will be filed by being placed in the appropriate public records of the Licensing Division of the Copyright Office. The date of filing will be the date when the Notice and fee are both received in the Copyright Office. An acknowledgment of receipt and filing will be provided to the sender.

(4) Alternatively, if the person or entity intending to obtain the compulsory license knows the name and address of the copyright owner of the nondramatic musical work, or the agent of the copyright owner as described in paragraph (a)(4) of this section, the Notice of Intention may be served on the copyright owner or the agent of the copyright owner by sending the Notice by mail or delivering it by reputable courier service to the address of the copyright owner or agent of the copyright owner. For purposes of section 115(b)(1) of title 17 of the United States Code, the Notice will not be considered properly served if the Notice is not sent to the copyright owner or the agent of the copyright owner as described in paragraph (a)(4) of this section, or if the Notice is sent to an incorrect address.

(5) If a Notice is sent by certified mail or registered mail, a mailing receipt shall be sufficient to prove that service was timely. In the absence of a receipt of mailing by certified mail or registered mail, the person or entity intending to obtain the compulsory license shall bear the burden of proving that the Notice was served on the copyright owner or its authorized agent in a timely manner.

(6) If a Notice served upon a copyright owner or an authorized agent of a copyright owner identifies more than 50 works that are embodied or intended to be embodied in phonorecords made under the compulsory license, the copyright owner or authorized agent may send the person who served the Notice a demand that a list of each of the works so identified be resubmitted in an electronic format, along with a copy of the original Notice. The person who served the Notice must submit such a list, which shall include all of the information required in paragraph (d)(1)(v) of this section, within 30 days after receipt of the demand from the copyright owner or authorized agent. The list shall be submitted on magnetic disk or another medium widely used at the time for the electronic storage of data, in the form of a flat file, word processing document or spreadsheet readable with computer software in wide use at such time, with the required information identified and/or delimited so as to be readily discernible. The list may be submitted by means of electronic transmission (such as e-mail) if the demand from the copyright owner or authorized agent states that such submission will be accepted.

(g) *Harmless errors.* Harmless errors in a Notice that do not materially affect the adequacy of the information required to serve the purposes of section 115(b)(1) of title 17 of the United States Code, shall not render the Notice invalid.

3. Section 201.19 is amended as follows:

a. By revising paragraph (a)(3);

b. By redesignating paragraphs (a)(4) through (a)(11) as paragraph (a)(5) through (a)(12), respectively;

c. By adding a new paragraph (a)(4);

d. By removing ''subparagraph (B) of this § 201.19(a)(5)(iii)'' and adding ''paragraph (a)(7)(iii)(B) of this section'' in its place each place it appears;

e. By removing ''paragraph (B) of this § 201.19(a)(5)(iii)'' and adding ''paragraph (a)(7)(iii)(B) of this section'' in its place each place it appears;

f. In newly designated paragraph (a)(7), by removing ''paragraph (a)(5)'' and adding ''paragraph (a)(6) of this section'' in its place;

g. In paragraph (c)(2)(iii), by removing ''paragraph (a)(7)'' and adding ''paragraph (a)(10)'' in its place;

h. In paragraph (d), by removing ''§ 201.19(a)(4)'' and adding ''paragraph (a)(5) of this section'' in its place;

i. By revising paragraph (e)(7)(i);

j. By revising paragraph (e)(7)(ii)(A);

k. In paragraph (e)(7)(ii)(B), by removing ''§ 202.19(e)(7)(ii)'' and adding ''this paragraph (e)(7)(ii)'' in its place;

l. In paragraph (e)(7)(ii)(D), by removing ''this § 201.19(e)(7)(ii)'' and adding ''this paragraph (e)(7)(ii)'' in its place;

m. By adding a new paragraph (e)(7)(iv);

n. By revising paragraph (f)(3)(iii);

o. In paragraph (f)(4)(ii), by removing ''paragraphs (A) through (F) of this § 201.19(f)(4)(i)'' and adding ''paragraphs (f)(4)(i)(A) through (F) of this section'' in its place;

p. In paragraph (f)(5), by removing ''[subject to paragraph (f)(3)(iii)(A)]';

q. By revising paragraph (f)(7)(i);

r. By revising paragraph (f)(7)(iii)(A);

s. In paragraph (f)(7)(iii)(B), by removing ''§ 202.19(f)(7)(iii)'' and adding ''this paragraph (f)(7)(iii)'' in its place; and

t. By adding a new paragraph (f)(7)(iv).

The revisions and additions to § 201.19 read as follows:

§ 201.19 Royalties and statements of account under compulsory license for making and distributing phonorecords of nondramatic musical works.

(a) * * *

(3) For the purposes of this section, the term copyright owner, in the case of any work having more than one copyright owner, means any one of the co-owners.

(4) For the purposes of this section, the service of a Statement of Account on a copyright owner under paragraph (e)(7) or (f)(7) of this section may be accomplished by means of service on either the copyright owner or an agent of the copyright owner with authority to receive Statements of Account on behalf of the copyright owner. In the case where the work has more than one copyright owner, the service of the Statement of Account on one co-owner or upon an agent of one of the co-owners shall be sufficient with respect to all co-owners.

* * * * *

(e) * * *

(7) *Service.* (i) Each monthly Statement of Account shall be served on the copyright owner or the agent with authority to receive Statements of Account on behalf of the copyright owner to whom or which it is directed, together with the total royalty for the month covered by the Monthly Statement, by mail or by reputable courier service on or before the 20th day of the immediately succeeding month. However, in the case where the licensee has served its Notice of Intention upon an agent of the copyright owner pursuant to § 201.18, the licensee is not required to serve Statements of Account or make any royalty payments until the licensee receives from the agent with authority to receive the Notice of Intention notice of the name and address of the copyright owner or its agent upon whom the licensee shall serve Statements of Account and the monthly royalty fees. Upon receipt of this information, the licensee shall serve Statements of Account and all royalty fees covering the intervening period upon the person or entity identified by the agent with authority to receive the Notice of Intention by or before the 20th day of the month following receipt of the notification. It shall not be necessary to file a copy of the Monthly Statement in the Copyright Office.

(ii)(A) In any case where a Monthly Statement of Account is sent by mail or reputable courier service and the Monthly Statement of Account is returned to the sender because the copyright owner or agent is no longer located at that address or has refused to accept delivery, or in any case where an address for the copyright owner is not known, the Monthly Statement of Account, together with any evidence of mailing or attempted delivery by courier service, may be filed in the Licensing Division of the Copyright Office. Any Monthly Statement of Account submitted for filing in the Copyright Office shall be accompanied by a brief statement of the reason why it was not served on the copyright owner. A written acknowledgment of receipt and filing will be provided to the sender.

* * * * *

(iv) If a Monthly Statement of Account is sent by certified mail or registered mail, a mailing receipt shall be sufficient to prove that service was timely. In the absence of a receipt of mailing by certified mail or registered mail, the compulsory licensee shall bear the burden of proving that the Statement of Account was served on the copyright owner or its authorized agent in a timely manner.

(f) * * *

(3) * * *

(iii) If the compulsory licensee is a business organization, the name and title of the chief executive officer, managing partner, sole proprietor or other person similarly responsible for the management of such entity.

* * * * *

(7) *Service.* (i) Each Annual Statement of Account shall be served on the copyright owner or the agent with authority to receive Statements of Account on behalf of the copyright owner to whom or which it is directed by mail or by reputable courier service on or before the twentieth day of the third month following the end of the fiscal year covered by the Annual Statement. It shall not be necessary to file a copy of the Annual Statement in the Copyright Office. An Annual Statement of Account shall be served for each fiscal year during which at least one Monthly Statement of Account shall be served for each fiscal year during which at least one Monthly Statement of Account was required to have been served under paragraph (e)(7) of this section.

* * * * *

(iii)(A) In any case where an Annual Statement of Account is sent by mail or by reputable courier service and is returned to the sender because the copyright owner or agent is not located at that address or has refused to accept delivery, or in any case where an address for the copyright owner is not known, the Annual Statement of Account, together with any evidence of mailing or attempted delivery by courier service, may be filed in the Licensing Division of the Copyright Office. Any Annual Statement of Account submitted for filing shall be accompanied by a brief statement of the reason why it was not served on the copyright owner. A written acknowledgment of receipt and filing will be provided to the sender.

* * * * *

(iv) If an Annual Statement of Account is sent by certified mail or registered mail, a mailing receipt shall be sufficient to prove that service was timely. In the absence of a receipt of mailing by certified mail or registered mail, the licensee shall bear the burden of proving that the Annual Statement of Account was served properly in a timely manner.

* * * * *

Dated: March 8, 2004.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 04–5595 Filed 3–10–04; 8:45 am]

BILLING CODE 1410–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 115–CMT; FRL–7635–3]

Approval and Promulgation of Implementation Plans for California—San Joaquin Valley PM–10 Nonattainment Area; Serious Area Plan for Attainment of the 24-Hour and Annual PM–10 Standards; Reopening of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: EPA is reopening the comment period for the proposed rule published February 4, 2004 (69 FR 5412), proposing to approve the ''2003 PM10 Plan, San Joaquin Valley Plan to Attain Federal Standards for Particulate Matter 10 Microns and Smaller,'' submitted on August 19, 2003, and Amendments to that plan submitted on December 30, 2003, as meeting the Clean Air Act requirements applicable to the San Joaquin Valley, California PM–10 (particulate matter of 10 microns or less) nonattainment area. The original comment period closed on March 5, 2004.

DATES: The comment period on the proposed rule is reopened and comments must be received by March 19, 2004.

ADDRESSES: Mail comments to Doris Lo, Planning Office (AIR2), EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105. Comments may also be submitted electronically to *lo.doris@epa.gov* or through hand delivery/courier.

FOR FURTHER INFORMATION CONTACT: Doris Lo, Planning Office (AIR2), U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California, 94105. (415) 972–3959, email: *lo.doris@epa.gov.*

Dated: March 4, 2004.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 04–5509 Filed 3–10–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–165–1–7610; FRL–7635–1]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Regulations for Control of Air Pollution by Permits for New Sources and Modifications Including Incorporation of Marine Vessel Emissions in Applicability Determinations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the Texas State Implementation Plan (SIP). This includes revisions that the Texas Commission on Environmental Quality (TCEQ) submitted to EPA on September 16, 2002, to revise the definitions of ''building, structure, facility, or installation'' and ''secondary emissions'' as defined in section 116.12 and section 116.160. This also includes revisions to section 116.160 and section 116.162 to incorporate updated Federal regulation citations. This action is being taken under section 110 of the Federal Clean Air Act, as amended (the Act or CAA).

DATES: Comments on the proposed action must be received by April 12, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in the General Information section of the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Stephanie Kordzi of the Air Permits Section at (214) 665–7520, or *kordzi.stephanie@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' means EPA.

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I. What State Rules Are Being Addressed in This Document?

In today's action we are proposing to approve into the Texas SIP revisions to Title 30 of the Texas Administrative Code (30 TAC) sections 116.12, Nonattainment Review Definitions; 116.160, Prevention of Significant Deterioration Requirements; and 116.162, Evaluation of Air Quality Impacts. The TCEQ adopted these revisions on October 10, 2001, and submitted the revisions to us for approval as a revision to the SIP on September 16, 2002.

30 TAC section 116.12—Nonattainment Review. The previous State version of this section, which is the existing SIP-approved version (see 65 FR 43994, July 17, 2000), excludes the ''activities of any vessel'' from the definition of ''building, structure, facility, or installation.'' The revised version that the State adopted on October 10, 2001, and that the State has submitted for EPA's approval, deletes the ''except the activities of any vessel'' clause from 116.12(4). Texas has explained that this change will allow the inclusion of marine vessel emissions in applicability determinations for nonattainment permits.

30 TAC section 116.160—Prevention of Significant Deterioration Requirements. The previous State version of this section, which is the existing SIP-approved version (see 67 FR 58697, September 18, 2002), incorporates by reference the Federal Prevention of Significant Deterioration (PSD) regulations at 40 CFR 52.21, as amended June 3, 1993. Those regulations excluded the ''activities of any vessel'' from the definition of ''building, structure, facility, or installation.'' The revised version that the State adopted on October 10, 2001, and that the State has submitted for EPA's approval, excludes the CFR definition of ''building, structure, facility, or installation,'' because the CFR definition includes language vacated by the court in *Natural Resources Defense Council* v. *EPA,* 725 F.2d 761 (D.C. Cir. 1984) (see discussion below under ''Legal Background''). Instead, the revised version of section 116.160 defines ''building, structure, facility, or installation'' consistent with the definition in revised section 116.12, discussed above. Texas has explained that this change will allow the inclusion of marine vessel emissions in applicability determinations for PSD permits. In addition, the revised section 116.160 replaces the definition of ''secondary emissions'' at 40 CFR 52.21 with language consistent with the NRDC decision.

The revised section 116.160 otherwise incorporates the version of the Federal PSD air quality regulations promulgated at 40 CFR 52.21 in 1996, as well as the most recent version of 40 CFR 51.301 (amended 1999).

Finally, revised subsections 116.160(d) and (e) make minor changes such as clarifying references to the ''administrator'' and ''executive director.''

30 TAC section 116.162, Evaluation of Air Quality Impacts. EPA approved the previous State version of this section into the SIP on August 19, 1997. 62 FR 44083. The new version submitted to EPA contains only minor typographical and citation changes.

II. What Is the Legal Basis for EPA's Proposed Approval of These State Rules?

Section 110 of the Act requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the National Ambient Air Quality Standards. Each State must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP. In order for State regulations to be incorporated into the Federally-enforceable SIP, States must formally adopt these regulations and control strategies consistent with State and Federal requirements. Section 116 of the Act provides that the States retain the authority to adopt measures no less stringent than federal requirements, unless otherwise preempted.

Once a State adopts a rule, regulation, or control strategy, the State may submit it to us for inclusion into the SIP in accordance with section 110 of the Act. We must then decide on an appropriate Federal action, provide public notice and seek additional comment regarding the proposed Federal action on the State submission. If we receive relevant adverse comments, we must address them before taking a final action.

Under section 110 of the Act, when we approve all State regulations and supporting information, those State regulations and supporting information become a part of the federally approved SIP.

Additional details on the legal basis for this proposed rule may be found in the Technical Support Document (TSD) for this action.

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

Currently, the State of Texas issues and enforces PSD permits directly in all areas of the State without final approval by EPA, with the exception of Indian lands and situations where the applicability determinations would be affected by dockside emissions of vessels. As currently approved, Chapter 116 incorporates the PSD/Nonattainment (NA) review permitting requirements and definitions from the vacated 1982 regulations in section 116.12(4) for NA and section 116.160(a) for PSD.

Final approval of the changes to section 116.12 and section 116.160(c) will grant full approval of the State's preconstruction permitting SIP for all sources, except for those sources located on land under the control of Indian governing bodies. These changes to section 116.12 are not inconsistent with the requirements of the Clean Air Act.

IV. What Action Is EPA Taking?

We are approving as a revision to the Texas SIP revisions of 30 TAC sections 116.12, Nonattainment (NA) Review Definitions; 116.160, Prevention of Significant Deterioration Requirements; and 116.162, Evaluation of Air Quality Impacts, which Texas submitted on September 16, 2002.

We are also proposing to revise 40 CFR 52.2303, Significant deterioration of air quality, as follows. First, we are proposing to remove paragraph (d), which retained applicable requirements of 40 CFR 52.21 for new major sources or major modifications to existing stationary sources for which applicability determinations of PSD would be affected by dockside emissions of vessels. Because the regulations that we are approving today enable Texas to make PSD applicability determinations for such sources, paragraph (d) is no longer necessary. Second, we are proposing to revise and reorganize paragraph (a) to reflect the current information concerning Texas' PSD program and to make paragraph (a) easier to understand.

V. General Information

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

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under TX–165–1–7610. The official public rulemaking file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the official public rulemaking file does not include Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. The official public rulemaking file is available for public viewing at the Air Permitting Section, EPA Region 6, 1445 Ross Avenue, Dallas, TX. EPA requests that if at all possible you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Offices official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

2. Copies of the State submittal and EPA's Technical Support Document are also available for public inspection during normal business hours, by appointment at the State air agency: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

3. Electronic Access. You may access this **Federal Register** document electronically through the Regulations.gov Web site at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment. For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information the disclosure of which is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number, TX–165–1–7610, in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you wish to submit comments electronically (via e-mail, Regulations.gov, or on disk or CD–ROM), 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. The EPA's policy is that EPA will not edit your comments. 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 public rulemaking file. 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.

a. *E-mail* Comments may be submitted by electronic mail (e-mail) to Ms. Stephanie Kordzi at *kordzi.stephanie@epa.gov*, Subject ''Public comment on ID No. TX–165–1–7610.'' In contrast to the Regulations.gov Web site, EPA's e-mail system is not an ''anonymous'' system. If you send an e-mail comment directly to EPA, your e-mail address will be automatically captured and included as part of the comment that is placed in the official public rulemaking file.

b. *Regulations.gov.* Comments may be submitted electronically at the Regulations.gov Web site, the central online rulemaking portal of the United States government. Every effort is made to ensure that the Web site includes all rule and proposed rule notices that are currently open for public comment. You may access the Regulations.gov Web site at *http://www.regulations.gov*. Select ''Environmental Protection Agency'' at the top of the page and click on the ''Go'' button. The list of current EPA actions available for comment will be displayed. Select the appropriate action and follow the online instructions for submitting comments. Unlike EPA's e-mail system, the Regulations.gov Web site is an ''anonymous'' system, which means that any personal information, e-mail address, or other contact information will not be collected unless it is provided in the text of the comment. *See* the Privacy Notice at the Regulations.gov Web site for further information. Please be advised that EPA cannot contact you for any necessary clarification unless your contact information is included in the body of comments submitted through the Regulations.gov Web site.

c. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to: Mr. David Neleigh, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Please include the text ''Public comment on ID No. TX–165–1–7610'' on the disk or CD ROM. These electronic submissions will be accepted in WordPerfect, Word, or ASCII file format. You should avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Mr. David Neleigh, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Please include the text ''Public comment on ID No. TX–165–1–7610'' in the subject line of the first page of your comments.

3. *By Hand Delivery or Courier.* Deliver your written comments or comments on a disk or CD ROM to: Mr. David Neleigh, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, Attention ''Public comment on ID No. TX–165–1–7610.'' Such deliveries are only accepted during official hours of business, which are Monday through Friday, 8:30 a.m. to 4:00 p.m., excluding Federal holidays.

4. *By Facsimile.* Fax your comments to: (214) 665–7263, Attention ''Public comment on ID No. TX–165–1–7610.''

C. How Should I Submit CBI to the Agency?

You may assert a business confidentiality claim covering CBI included in comments submitted by mail or hand delivery in either paper or electronic format. CBI should not be submitted via e-mail or at the Regulations.gov Web site. Clearly mark any part or all of the information submitted which is claimed as CBI at the time the comment is submitted to EPA. CBI should be submitted separately, if possible, to facilitate handling by EPA. Submit one complete version of the comment that includes the properly labeled CBI for EPA's official administrative record and one copy that does not contain the CBI to be included in the public rulemaking file. If you submit CBI on a disk or CD ROM, mark the outside of the disk or the CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI. Also submit a non-CBI version if possible. Information which is properly labeled as CBI and submitted by mail or hand delivery will be disclosed only in accordance with procedures set forth in 40 CFR part 2. For comments submitted by EPA's e-mail system or through the Regulations.gov Web site, no CBI claim may be asserted. Do not submit CBI to the Regulations.gov Web site or via EPA's e-mail system. Any claim of CBI will be waived for comments received through the Regulations.gov Web site or EPA's e-mail system. For further advice on submitting CBI to the Agency, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate ID No. in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

VI. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

Dated: February 24, 2004.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 04–5511 Filed 3–10–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA211–4224; FRL–7634–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Control of Volatile Organic Compound Emissions From AIM Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision pertains to the control of volatile organic compound (VOC) emissions from architectural and industrial maintenance (AIM) coatings.

DATES: Written comments must be received on or before April 12, 2004.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in Part III of the **SUPPLEMENTARY INFORMATION** section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION: On December 3, 2003, the Pennsylvania Department of Environmental Protection (PADEP) submitted a formal revision to its SIP. The SIP revision consists of the standards and requirements to control VOC emissions from AIM coatings.

I. Background

In December 1999, EPA identified emission reduction shortfalls in several 1-hour ozone nonattainment areas in the Ozone Transport Region (OTR) and required those areas to address the shortfalls. The Ozone Transport Commission (OTC) developed model rules of control measures for a number of source categories and estimated the emission reduction benefits from implementing those model rules. The OTC AIM coatings model rule was based on the existing rules developed by the California Air Resources Board, which were analyzed and modified by the OTC workgroup to address VOC reduction needs in the OTR. The standards and requirements contained in Pennsylvania's AIM coatings rule are consistent with the OTC model rule. Versions of this same model rule to control VOC emissions from AIM coatings has been or is currently being adopted in several states in the Northeastern and Mid-Atlantic regions of the United States. As such this regulation does not impose requirements unique to the Commonwealth of Pennsylvania.

II. Summary of SIP Revision

The Pennsylvania AIM coatings rule (Chapter 130, subpart C) applies to any person who supplies, sells, offers for sale, or manufactures, blends or repackages an AIM coating for use within the Commonwealth of Pennsylvania, as well as a person who applies or solicits the application of an AIM coating within the Commonwealth. The rule does not apply to the following: (1) Any AIM coating that is sold or manufactured for use outside the Commonwealth or for shipment to other manufacturers for reformulation or repackaging; (2) any aerosol coating product; or (3) any architectural coating that is sold in a container with a volume of one liter (1.057 quarts) or less. The rule sets specific VOC content limits, in grams per liter, for AIM coating categories with a compliance date of January 1, 2005. Manufacturers would ensure compliance with the limits by reformulating coatings and substituting coatings with compliant coatings that are already in the market. The rule contains VOC content requirements for a wide variety of field-applied coatings, including graphic arts coatings, lacquers, primers and stains. The rule also contains provisions for a variance from the VOC content limits, which can be issued only after public hearing and with conditions for achieving timely compliance. In addition, the rule contains administrative requirements for labeling and reporting. There are a number of test methods that would be used to demonstrate compliance with this rule. Some of these test methods include those promulgated by EPA and

South Coast Air Quality Management District of California. The test methods used to test coatings must be the most current approved method at the time testing is performed.

III. Proposed Action

EPA is proposing to approve the Pennsylvania SIP revision for the control of VOC emissions from AIM coatings submitted on December 3, 2003. The Pennsylvania AIM rule is part of the Commonwealth's strategy to achieve and maintain the ozone standard throughout the Commonwealth. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting either electronic or written comments. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number PA211–4224 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

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

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *morris.makeba@epa.gov,* attention: PA211–4224. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

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

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

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Considerations When Preparing Comments to EPA

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial

number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This proposed rule pertaining to Pennsylvania's AIM rule, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 2, 2004.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 04–5510 Filed 3–10–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 67

[USCG–2003–14472]

RIN 1625–AA63

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 221

[Docket No. MARAD–2003–15171]

RIN 2133–AB51

Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade; Second Rulemaking

AGENCIES: Coast Guard, DHS, and Maritime Administration, DOT.

ACTION: Proposed rule; notice of public meeting.

SUMMARY: The Coast Guard and the Maritime Administration will hold a public meeting on their joint notice of proposed rulemaking published in the **Federal Register** on February 4, 2004 (69 FR 5403). In that document, the Coast Guard proposes to amend its regulations on documentation, under the lease-financing provisions, of vessels engaged in the coastwise trade. The Maritime Administration (MARAD) proposes to amend its regulations to require MARAD's approval of all transfers of the use of a lease-financed vessel engaged in the coastwise trade back to the vessel's foreign owner, the parent of the owner, a subsidiary or affiliate of the parent, or an officer, director, or shareholder of one of them.

DATES: The public meeting will be held on April 2, 2004, from 9 a.m. to 3 p.m. The meeting may close early if all business is finished.

ADDRESSES: The public meeting will be held at the Department of Transportation, Nassif Building, room 2230, 400 Seventh Street SW., Washington, DC 20590. In order to enter the Nassif Building, provide the names of persons planning to attend the meeting and the company or organizations they represent to Robert S. Spears at the address under **FOR FURTHER INFORMATION CONTACT** at least two days before the meeting.

FOR FURTHER INFORMATION CONTACT: If you have questions on the public meeting, call Robert S. Spears, Office of Standards Evaluation and Development (G–MSR), U.S. Coast Guard Headquarters, telephone 202–267–1099 or e-mail *rspears@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard and the Maritime Administration will hold a public meeting on their joint notice of proposed rulemaking published in the **Federal Register** on February 4, 2004 (69 FR 5403).

Procedural

The meeting is open to the public. Non-Federal Government visitors must enter the Nassif Building (DOT Headquarters) through the southwest security entrance near the corner of Seventh and E Streets. Security staff will compare the visitor's photo identification card with the names on the list of meeting attendees. Visitors will be escorted to and from the meeting rooms. There is limited commercial parking in the area (at Sixth and School Streets Southwest and at Sixth and D Streets Southwest) and a Metrorail stop (L'Enfant Plaza) in the building. Attendees may make oral presentations during the meeting. Please note that the meeting may close early if all business is finished.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Robert S. Spears at the address under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: March 5, 2004.

By Order of the Maritime Administrator:

Murray A. Bloom,

Acting Secretary, Maritime Administration.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security, and Environmental Protection, Coast Guard.

[FR Doc. 04–5422 Filed 3–10–04; 8:45 am]

BILLING CODE 4910–15–P

Notices

Federal Register

Vol. 69, No. 48

Thursday, March 11, 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

Office of the Secretary

Edward R. Madigan United States Agricultural Export Excellence Board of Evaluators: Nominations

AGENCY: Office of the Secretary, USDA.

ACTION: Edward R. Madigan United States Agricultural Export Excellence Board of Evaluators: Nominations.

SUMMARY: Notice is hereby given that nominations are being sought for six (6) qualified persons to serve on the Edward R. Madigan United states Agricultural Export Excellence Board of Evaluators (Board). The role of the Board is to provide the Secretary of Agriculture with advice and recommendations for the selection of recipients of the Edward R. Madigan United States Agricultural Export Excellence Award.

DATES: Written nominations must be received by the Foreign Agricultural Service (FAS) by 5 p.m., Eastern Daylight Time, April 12, 2004.

ADDRESSES: All nominating materials should be sent to Mr. James Warden, United States Department of Agriculture, Foreign Agricultural Service, Room 4939S–Stop 1052, 1400 Independence Avenue, SW., Washington, DC 20250–1052. Forms may also be submitted by fax to (202) 690–0193.

FOR FURTHER INFORMATION CONTACT: Persons interested in serving on the Edward R. Madigan United States Agricultural Export Excellence Board of Evaluators, or in nominating individuals to serve, should contact Mr. James Warden, Foreign Agricultural Service, by telephone (202) 720–6343, by fax (202) 690–0193, or by electronic mail to *jim.warden@fas.usda.gov* and request Form AD–755 and Form SF–181. Form AD–755 is required and is available at the FAS home page: *http://www.fas.usda.gov/admin/ad755.pdf*. Form SF–181 is requested, but optional, and is available at *http://www.fas.usda.gov/admin/sf181.pdf*. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) shoudl contact USDA's Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: The Board is authorized by section 261(h) of the Federal Agriculture Improvement and Reform Act of 1996. The overall purpose of the Board is to provide the Secretary of Agriculture with advice and recommendations for the selection of recipients of the Edward R. Madigan United States Agricultural Export Excellence Award. The Board is composed of six (6) representatives from the private sector selected for their knowledge and experience in exporting U.S. agricultural products. More information about the purpose and function of the Board and can be found at: *http://www.fas.usda.gov/info/madigan/madigan.html*.

The members of the Board are appointed by the Secretary of Agriculture and serve at the discretion of the Secretary. Board members serve at their own expense; they are not compensated for their services and do not receive per diem or travel funds. Three (3) members will be selected for 2-year term maximums and three (3) others for 3-year term maximums. The Secretary may renew an appointment for one or more additional terms. The Board shall meet as often as the Secretary of Agriculture deems necessary either in person or via teleconference to review nominations and make recommendations.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, physical handicap, marital status, or sexual orientation. To ensure that the work of the Board takes into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent the interest of minorities, women and persons with disabilities.

Members are selected primarily for their knowledge and experience in exporting U.S. agricultural products. No person, company, producer, farm organization, trade association or other entity has a right to representation on the Board. In making selections, every effort will be made to maintain balanced representation of the various broad industries within the United States as well as geographic diversity.

Dated: February 23, 2004.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 04–5497 Filed 3–10–04; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Notice of Funds Availability; Tree Assistance Program for Michigan Tree, Vine and Bush Losses Due to Fire Blight

AGENCY: Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: This notice announces the availability of $9,700,000 for the Tree Assistance Program (TAP) to provide assistance to orchardists who had tree, vine or bush losses in Michigan due to fire blight that occurred since January 1, 2000.

DATES: Applications will be accepted until March 25, 2004, or such other date as announced by the Deputy Administrator for Farm Programs of the Farm Service Agency (FSA).

FOR FURTHER INFORMATION CONTACT: Eloise Taylor, Chief, Compliance Branch, Production, Emergencies and Compliance Division, FSA/USDA, Stop 0517, 1400 Independence Avenue SW., Washington, DC 20250–0517; telephone (202) 720–9882; e-mail: *Eloise_Taylor@wdc.usda.gov*. Persons with disabilities who require alternative means for communication of regulatory information, (Braille, large print, audiotape, etc. should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

TAP was authorized but not funded by section 10201 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) (7 U.S.C. 8201) to provide assistance to eligible orchardists to replant trees, bushes and vines that were grown for the production of an annual crop and were lost due to a natural disaster. This notice sets out a

special program within TAP for certain fire blight losses in Michigan. Fire blight is a destructive bacterial disease of trees caused by *Erwinia Amylovora* that attacks succulent tissues of blossoms, shoots, water sprouts and root suckers, and produces an infection that may extend into scaffold limbs, trunks or root systems, and may kill the tree. Section 3602 of the Emergency Supplemental Appropriations Act, 2003 (Pub. L. 108–83) provides that the Secretary of Agriculture shall use $9,700,000 of the funds of the Commodity Credit Corporation, to remain available until expended, to provide assistance under TAP to compensate eligible orchardists for tree losses incurred since January 1, 2000, due to fire blight in the State of Michigan. Assistance will be subject to regulations and restrictions governing the new TAP provided in the 2002 Act. Those regulations were published March 2, 2004 (69 FR 69 FR 9744) and are found at 7 CFR part 783. Also, the restrictions of the statute apply. Those include a requirement of replanting, a limitation on payments by ''person'', a limitation on acres for which relief can be claimed, a requirement that the loss be tied to a natural disaster, and others. If after the claims filed during the allowed period set out in this notice are received, the available funds are less than the eligible claims a proration will be made. Claims are limited to 75 per cent of the cost of replanting on eligible acres and are subject to claims per person of $75,000 and a limit on a claim to costs on no more than 500 acres. If monies are, by contract, left over, additional sign ups or claims may be entertained as announced by the Deputy Administrator for Farm Programs of the FSA on behalf of FSA and CCC. The Deputy Administrator may waive or amend deadlines to the extent not prohibited by the statute. Statutory TAP provisions dealing with the availability of seedlings do not apply here because no seedlings are available and the fire blight provisions specifically call for the use of CCC funds. All claims are subject to the availability of funds.

Applications

Applications will be accepted until March 25, 2004, or such other date as announced by the Deputy Administrator for Farm Programs of FSA.

Application forms are available for TAP at FSA county offices or on the Internet at *http://www.fsa.usda.gov*. A complete application for TAP benefits and related supporting documentation must be submitted to the county office before the deadline.

A complete application will include all of the following:

(1) A form provided by FSA;

(2) A written estimate of the number of trees, bushes or vines lost or damaged which is prepared by the owner or someone who is a qualified expert, as determined by the FSA county committee;

(3) The number of acres on which the loss was suffered;

(4) Sufficient evidence of the loss to allow the county committee to calculate whether an eligible loss occurred; and

(5) Other information as requested or required by regulation.

Signed at Washington, DC March 2, 2004.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 04–5494 Filed 3–10–04; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Public Meetings of Advisory Committee on Beginning Farmers and Ranchers

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. II, the Farm Service Agency (FSA) is issuing this notice to advise the public that meetings of the Advisory Committee on Beginning Farmers and Ranchers (Committee) will be held to discuss various beginning farmer issues.

DATES: The public meetings will be held March 24–25, 2004. The first meeting, on March 24, 2004, will start at 8:30 a.m., Eastern Standard Time (EST) and end at 5:30 p.m. EST. The second meeting, on March 25, 2004, will begin at 8 a.m. EST and end by 4 p.m. EST.

ADDRESSES: All meetings will be held at the Grand Hyatt Hotel, 1000 H Street, Washington, DC, telephone (202) 582–1234. Written requests to make oral presentations must be sent to: Mark Falcone, Designated Federal Official for the Advisory Committee on Beginning Farmers and Ranchers, Farm Service Agency, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 0522, Washington, DC 20250–0522; telephone (202) 720–1632; FAX (202) 690–1117; e-mail: *mark.falcone@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mark Falcone at (202) 720–1632.

SUPPLEMENTARY INFORMATION: Section 5 of the Agricultural Credit Improvement Act of 1992 (Pub. L. 102–554) required the Secretary of Agriculture (the Secretary) to establish the Committee for the purpose of advising the Secretary on the following:

(1) The development of a program of coordinated financial assistance to qualified beginning farmers and ranchers required by section 309(i) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1929). Under the program, Federal and State beginning farmer programs provide financial assistance to beginning farmers and ranchers;

(2) Methods of maximizing the number of new farming and ranching opportunities created through the program;

(3) Methods of encouraging States to participate in the program;

(4) The administration of the program; and

(5) Other methods of creating new farming or ranching opportunities.

The Committee meets at least once a year and all meetings are open to the public. The duration of the Committee is indefinite. Earlier meetings of the Committee, beginning in 1999, provided an opportunity for members to exchange ideas on ways to increase opportunities for beginning farmers and ranchers. Members discussed various issues and drafted numerous recommendations, which were provided to the Secretary.

Agenda items for the March, 2004 meetings include:

(1) The Beginning Farmer and Rancher Development Program, which was authorized by the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) (2002 Farm Bill), but has not been funded, and the Extension Risk Management Education Program (both programs under the jurisdiction of USDA's Cooperative, State, Research, Education and Extension Service);

(2) Risk Management Education and Outreach Programs, along with crop insurance issues concerning participating insurance companies (under the jurisdiction of USDA's Risk Management Agency);

(3) Various beginning farmer and rancher conservation issues authorized by the 2002 Farm Bill (under the jurisdiction of USDA's Natural Resources Conservation Service);

(4) FSA's beginning farmer programs, borrower training program, and streamlining of forms and regulations; and

(5) The Kellogg Foundation's involvement in providing assistance to new immigrant and refugee farmers.

Attendance is open to all interested persons but limited to space available. Anyone wishing to make an oral statement should submit a request in

writing (letter, fax, or e-mail) to Mark Falcone at the above address. Statements should be received no later than March 19, 2004. Requests should include the name and affiliation of the individual who will make the presentation and an outline of the issues to be addressed. The floor will be open to oral presentations beginning at 1:15 p.m. EST on March 24, 2004. Comments will be limited to 5 minutes, and presenters will be approved on a first-come, first-served basis.

Persons with disabilities who require special accommodations to attend or participate in the meetings should contact Mark Falcone by March 19, 2004.

Signed in Washington, DC, on March 2, 2004.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 04–5495 Filed 3–10–04; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice for Predecisional Administrative Review Process for Hazardous Fuel Reduction Projects Authorized by the Healthy Forest Restoration Act of 2003 in the Pacific Northwest Region: Oregon and Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Scenic Areas, Grasslands, Forests, and the Regional Office of the Pacific Northwest Region for giving legal notice for the opportunity to object to a proposed authorized hazardous fuel reduction project under 36 CFR 218. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for proposed authorized hazardous fuel reduction projects; thereby notifying the public of objection opportunities, providing clear evidence of timely notice, and achieving consistency in administering the predecisional objection process. Note: The newspapers listed are the same newspapers used for publication of legal notice for public comment under the provision of 36 CFR 215, and appeal of decisions under 36 CFR 215 and 36 CFR 217.

DATES: Publication of legal notices in the listed newspapers will begin with legal notices published on or after March 11, 2004. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Jill A. Dufour, Regional Environmental Coordinator, Pacific Northwest Region, 333 SW. First Avenue, (P.O. Box 3623), Portland, Oregon 97208, phone: 503–808–2276.

SUPPLEMENTARY INFORMATION: Responsible Officials in the Pacific Northwest Region will give legal notice of the objection process for proposed authorized hazardous fuels reduction projects in the following newspapers, which are listed by Forest Service administrative units. Where more than one newspaper is listed for any unit, the first newspaper listed is the principle newspaper. The principle newspaper shall be used to constitute legal evidence that the agency has given timely and constructive notice for the predecisional administrative review under 36 CFR 218. The timeframe for appeal shall be based on the date of publication of a notice of decision in the principle newspaper.

Pacific Northwest Regional Office

Regional Forester decisions on Oregon National Forests: *The Oregonian,* Portland, Oregon.

Regional Forester decisions on Washington National Forests: *The Seattle Post-Intelligencer,* Seattle, Washington.

Columbia River Gorge National Scenic Area Manager decisions: *The Oregonian,* Portland, Oregon.

Oregon National Forests

Deschutes National Forest

Forest Supervisor decisions
Bend/Fort Rock District Ranger decisions
Crescent District Ranger decisions
Redmond Air Center Manager decisions
The Bulletin, Bend, Oregon
Sisters District Ranger decisions—*Sisters Nugget,* Sisters, Oregon

Fremont-Winema National Forests

Forest Supervisor decisions
Bly District Ranger decisions
Lakeview District Ranger decisions
Paisley District Ranger decisions
Silver Lake District Ranger decisions
Chemult District Ranger decisions
Chiloquin District Ranger decisions
Klamath District Ranger decisions
Herald and News, Klamath Falls, Oregon

Malheur National Forest

Forest Supervisor decisions
Blue Mountain District Ranger decisions
Prairie City District Ranger decisions
Blue Mountain Eagle, John Day, Oregon
Emigrant Creek District Ranger decisions
Burn Times Herald, Burns, Oregon

Mt. Hood National Forest

Forest Supervisor decisions
Clackamas River District Ranger decisions
Zigzag District Ranger decisions
Hood River District Ranger decisions
Barlow District Ranger decisions
The Oregonian, Portland, Oregon

Ochoco National Forest

Forest Supervisor decisions—*The Bulletin,* Bend, Oregon
Newspapers, which may provide additional notice of Forest Supervisor decisions:
Central Oregonian, Prineville, Oregon
Madras Pioneer, Madras, Oregon
Blue Mountain Eagle, John Day, Oregon
The Times-Journal, Condon, Oregon
Crooked River National Grassland Area Manager decisions—*The Bulletin,* Bend, Oregon
Newspaper, which may provide additional notice of Area Manager decisions:
Madras Pioneer, Madras, Oregon
Lookout Mountain District Ranger decisions—*The Bulletin, Bend,* Oregon
Newspaper, which may provide additional notice of District Ranger decisions:
Central Oregonian, Prineville, Oregon
Paulina District Ranger decisions—*The Bulletin,* Bend, Oregon
Newspapers, which may provide additional notice of District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon
The Times-Journal, Condon, Oregon

Rogue River-Siskiyou National Forests

Forest Supervisor (Rogue River) decisions—*Mail Tribune,* Medford, Oregon
Forest Supervisor (Siskiyou) decisions—*Grants Pass Courier,* Grants Pass
Applegate District Ranger decisions
Ashland District Ranger decisions
Butte Falls District Ranger decisions
J. Herbert Stone Nursery Managers decisions
Prospect District Ranger decisions
Mail Tribune, Medford, Oregon
Chetco-Gold Beach District Ranger decisions—*Curry Coastal Pilot,* Brookings, Oregon
Galice-Illinois Valley District Ranger decisions—*Grants Pass Courier,* Grants Pass, Oregon

Powers District Ranger decisions—*The World,* Coos Bay, Oregon
Newspaper, which may provide additional notice of District Ranger decisions:
Curry County Reporter, Gold Beach, Oregon

Siuslaw National Forest

Forest Supervisor decisions—*Corvallis Gazette-Times,* Corvallis, Oregon
Hebo District Ranger decisions—*Headlight Herald,* Tillamook, Oregon
Mapleton District Ranger decisions
Oregon Dunes National Recreation Area Manager decisions
Waldport District Ranger decisions
Register-Guard, Eugene, Oregon

Umatilla National Forest

Forest Supervisor decisions
North Fork John Day District Ranger decisions
Heppner District Ranger decisions
Pomeroy District Ranger decisions
Walla Walla District Ranger decisions
East Oregonian, Pendleton, Oregon

Umpqua National Forest

Forest Supervisor decisions
Cottage Grove District Ranger decisions
Diamond Lake District Ranger decisions
North Umpqua District Ranger decisions
Tiller District Ranger decisions
Dorena Tree Improvement Center Manager decisions
The News Review, Roseburg, Oregon

Wallowa-Whitman National Forest

Forest Supervisor decisions
Baker Office-Whitman Unit decisions
Pine Office-Whitman Unit decisions
Unity Office-Whitman Unit decisions
Baker City Herald, Baker City, Oregon
Hells Canyon National Recreation Area Ranger decisions:
Occurring in Oregon—
Wallowa County Chieftain, Enterprise, Oregon
Occurring in Idaho—
Lewiston Morning Tribune, Lewiston, Idaho
La Grande District Ranger decisions—*The Observer,* La Grande, Oregon
Eagle Cap District Ranger decisions
Wallowa Valley District Ranger decisions
Wallowa County Chieftain, Enterprise Oregon

Williamette National Forest

Forest Supervisor decisions
Middle Fork District Ranger decisions
McKenzie River District Ranger decisions
Sweet Home District Ranger decisions
Register-Guard, Eugene, Oregon
Detroit District Ranger decisions—Salem *Statesman Journal*, Salem, Oregon

Washington National Forests

Colville National Forest

Forest Supervisor decisions
Three Rivers District Ranger decisions
Statesman-Examiner, Colville, Washington
Republic District Ranger decisions—*Republic News Miner*, Republic, Washington
Sullivan Lake District Ranger decisions
Newport District Ranger decisions
Newport Miner, Newport, Washington

Gifford Pinchot National Forest

Forest Supervisor decisions
Mount Adams District Ranger decisions
Mount St. Helens National Volcanic Monument Manager decisions
The Columbian, Vancouver, Washington
Cowlitz Valley District Ranger decisions—*The Chronicle*, Chehalis, Washington

Mt. Baker-Snoqualmie National Forest

Forest Supervisor decisions—*Seattle Post Intelligencer*, Seattle, Washington
Mt. Baker District Ranger decisions—*Skagit Valley Herald*, Mt. Vernon, Washington
Snoqualmie District Ranger decisions (north half of district)—*Valley Record*, North Bend, Washington
Snoqualmie District Ranger decisions (south half of district)—*Enumclaw Courier Herald*, Enumclaw, Washington
Darrington District Ranger decisions
Skykomish District Ranger decisions
Everett Herald, Everett, Washington

Okanogan and Wenatchee National Forests

Forest Supervisor decisions—*The Wenatchee World*, Wenatchee, Washington
Newspaper, which may provide additional notice of Forest Supervisor decisions:
The Yakima Herald-Republic, Yakima, Washington
Methow Valley District Ranger decisions—*Methow Valley News*, Twisp, Washington
Tonasket District Ranger decisions—*Wentachee World*, Wenatchee, Washington
Newspaper, which may provide additional notice of District Ranger decisions:
Okanogan Valley Gazette-Tribune, Oroville, Washington
Cle Elum District Ranger decisions—*Ellensburg Daily Record*, Ellensburg, Washington
Newspaper, which may provide additional notice of District Ranger decisions:
The Yakima Herald-Republic, Yakima, Washington
Chelan District Ranger decisions
Entiat District Ranger decisions
Lake Wenatchee and Leavenworth District Ranger decisions
The Wenatchee World, Wenatchee, Washington
Naches District Ranger decisions
The Wenatchee World, Wenatchee, Washington
Newspaper, which may provide additional notice of District Ranger decisions:
The Yakima Herald-Republic, Yakima, Washington

Olympic National Forest

Forest Supervisor decisions:
The Olympian, Olympia, Washington
Newspapers, which may provide additional notice of Forest Supervisor decisions:
Mason County Journal, Shelton, Washington
Peninsula Daily News, Port Angeles, Washington
The Daily World, Aberdeen, Washington
The Forks Forum, Forks, Washington
Hood Canal District Ranger decisions—*Peninsula Daily News*, Port Angeles, Washington
Newspaper, which may provide additional notice of District Ranger decisions:
Mason County Journal, Shelton, Washington
Pacific District Ranger decisions (south portion of district):
The Daily World, Aberdeen, Washington
Newspapers, which may provide additional notice of District Ranger decisions:
Peninsula Daily News, Port Angeles, Washington
The Forks Forum, Forks, Washington
Pacific District Ranger decisions (north portion of district)—*Peninsula Daily News*, Port Angeles, Washington
Newspapers, which may provide additional notice of District Ranger decisions:
The Forks Forum, Forks, Washington
The Daily World, Aberdeen, Washington

Dated: February 3, 2004.

Jim Golden,

Deputy Regional Forester.

[FR Doc. 04–5453 Filed 3–10–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Caribou-Targhee National Forest; Idaho; Caribou Travel Plan Revision—(Located in Bonneville, Bannock, Beark Lake, Bingham, Bonneville, Caribou, Franklin, Oneida, Power Counties in Idaho and Box Elder, Cache and Rich Counties in Utah and Lincoln County in Wyoming.)

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental impacts of the proposed action and alternatives to revise the Caribou Travel Plan for the Caribou portion of the Caribou-Targhee National Forest. The travel plan analysis will address both summer and winter travel; or snow-free and snow seasons. The Travel Plan Revision will tier to the FEIS for the 2003 Caribou Revised Forest Plan. The Caribou portion of the Caribou-Targhee National Forest is located in Southeast Idaho and portions of Western Wyoming and Northern Utah.

DATES: To be most useful to the analysis, comments concerning the proposed action should be received in writing 30 days from the publication of this notice. Comments will be accepted after that date. The draft environmental impact statement is expected in September of 2004 and the final environmental impact statement is expected February of 2005. If you would like to be included on our mailing list concerning this analysis, please contact Cynthia Hobach at 208–524–7500 or *chobach@fs.fed.us.*

ADDRESSES: Please send written comments to Caribou Travel Plan Revision Team, Caribou-Targhee National Forest, 1405 Hollipark Drive, Idaho Falls, Idaho 83401. Written comments may also be electronically submitted to *dtiller@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Debrah Tiller, Interdisciplinary Team Leader, Caribou-Targhee National Forest, 1405 Hollipark Drive, Idaho Falls, Idaho 83401 or visit our Web site at *www.fs.fed.us/r4/caribou-targhee,* under the Travel Plan Revision headline.

SUPPLEMENTARY INFORMATION: The proposed action, maps and other supporting documents can be viewed at *http://www.fs.fed.us/r4/caribou-targhee* under the Caribou travel plan revision heading. Hard copy documents are available at local forest offices. We are coordinating efforts with Tribal governments, Bureau of Land Management, U.S. Fish and Wildlife Service, Idaho Fish and Game, Idaho Department of Parks and Recreation and local County Commissioners. The following public meetings have been scheduled to aid people in understanding the proposed action and the analysis process, all meetings will be held from 6 p.m. to 8 p.m.:

March 18th in Madlad, ID at the Westside Ranger District, 195 South, 300 East
March 25th in Montpelier, ID at the Allred Building, Bear Lake County Fairgrounds, 21620 US Highway 30
March 31st in Preston, ID at the Robinson Building, Franklin County Fairgrounds, 185 West, 2nd North
April 1st, in Pocatello ID at the Westside Ranger District, 4350 Cliffs Drive
April 7th in Soda Springs, ID at the Tigert Middle School, 250 East, 2nd South
April 8th in Afton, WY at the City of Afton Building, 416 South Washington
April 15th in Idaho Falls, ID at the Caribou-Targhee Forest Headquarters, 1405 Hollipark Drive
April 21st in Fort Hall, ID at the Tribal Business Center, 306 Pima Drive

Purpose and Need for Action

The Caribou Travel Plan does not comply with programmatic direction set by the 2003 Caribou Revised Forest Plan. The travel does not comply with plan direction to manage most snow-free motorized travel on designated routes. The Revised Forest Plan also prescribes a limit on open motorized route densities during the snow-free season for many areas of the forest. The current travel plan exceeds these limits in some areas of the forest.

Proposed Action

The proposed action will meet plan direction by designating motorized routes in areas that were managed as open to cross-country motorized travel during the snow-free season. The proposed action will also address snow season motorized access through winter range prescriptions.

Possible Alternatives

Alternatives may include increasing or decreasing open motorized routes in various prescription areas. Alternatives that would not meet the prescribed open motorized route densities would require amending the Revised Forest Plan. Alternatives to the proposed action may include additional areas managed for a non-motorized experience during the snow season.

Lead and Cooperating Agencies

The USDA Forest Service.

Responsible Official

Jerry B. Reese, Caribou-Targhee Forest Supervisor, 1405 Hollipark Drive, Idaho Falls, ID 83401.

Nature of Decision To Be Made

Travel planning is an allocation process based on resource and social concerns. The framework for the decision is set by the programmatic direction outlined in the 2003 Caribou Revised Forest Plan: Most cross-country motorized travel is restricted to designated routes; snow-free designated motorized routes will adhere to the prescribed open motorized route densities; critical winter range areas will have designated motorized routes during the snow season and additional non-motorized areas for the snow season will be considered.

Scoping Process

Open houses will be held in area communities to discuss the proposed action and possible alternatives for revising the Caribou travel plan. Our electronic website contains more specific information, and public comment can be received electronically. See e-mail addresses, website addresses and public meeting information listed above.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Additional public comments will be accepted after publication of the DEIS anticipated by September 2004. The Final EIS and Records of Decision for the Caribou Travel Plan Revision are expected in February of 2005.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environment impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions.

Vermont Yankee Nuclear Power Corp. v. *NRDC*, 435 U.S. 5129,553 (1978). Also environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F.Supp. 1334, 1338 (E.D. Wis. 1980). because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available to public inspection.

(Authority: 40 CFR 1501.7 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: March 4, 2004.

Jerry B. Reese,

Forest Supervisor, Caribou-Targhee National Forest.

[FR Doc. 04–5469 Filed 3–10–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Reissuance of 10-Year Term Grazing Permits and Authorization To Graze Cattle in the Tushar Mountain Range, Beaver Ranger District, Fishlake National Forest in Iron and Piute Counties, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) to disclose the environmental effects of reissuing 10-year term grazing permits to continue authorizing cattle grazing on eight grazing allotments (North-Indian Creek, Circleville, South Beaver, Marysvale, Pine Creek/Sulphurdale, Cottonwood, Ten Mile, Junction) within the Beaver Ranger District and located on the Tushar Mountain Range near the city of Beaver in Beaver and Piute Counties, Utah. The permit reissuance would authorize the continued use of current grazing systems with presently permitted cattle numbers and seasons of use.

DATES: Comments in response to this Notice of Intent concerning the scope of the analysis should be received in writing on or before April 5, 2004.

ADDRESSES: Send written comments to: Tushar Mountain Range EIS, Attn: Dave Grider, Dixie National Forest, 1785 North Wedgewood Lane, Cedar City, UT 84720. Additional information can be obtained from Dave Grider, Interdisciplinary Team Leader, by phone: 435–865–3731 or by e-mail: *dgrider@fs.fed.us.*

RESPONSIBLE OFFICIAL: Dayle Flanigan, District Ranger, is the responsible official for this environmental impact statement. His address is: U.S. Forest Service, Beaver Ranger District, 575 South Main, P.O. Box E, Beaver, UT, 84713.

FOR FURTHER INFORMATION CONTACT: Dave Grider, Interdisciplinary Team Leader, Dixie National Forest, 1789 N. Wedgewood Lane, Cedar City, UT 84720, (435) 865–3731. A Scoping Document has been prepared to provide project information and request public review and comment. This Scoping Document can be accessed electronically at *http://www.fs.fed.us/r4/fishlake/projects/index.shtml.*

SUPPLEMENTARY INFORMATION: These eight allotments comprise 173,000 acres (two-thirds) of the 260,000-acre District on the eastern edge of the Basin and Range province. Elevations range from 5,200′ in Sevier Valley to over 12,000′ on Mount Belknap in the Tushar Range. Vegetation types range from sagebrush-grass and pinion-juniper in the valley floors to mountain brush, aspen, mixed conifer, and alpine-forb communities. Riparian ecosystems occur within many of these communities. Alpine riparian areas occur on Lake Peak and in the heads of North Creek. The major river drainage is Beaver River, which flows into the closed Great Basin. The South Beaver and North-Indian Creek Allotments include water bodies that are impaired or are tributary to streams that are impaired, but they do not exceed the State standard for total maximum daily load (TMDL) of pollutants, so the streams and lakes on these allotments are not included on the State's 303(d) list of waters not meeting water quality standards. The Circleville Allotment includes streams that flow to a segment of the Sevier River that is water quality limited, but no 303(d) streams are located in the Circleville Allotment.

Proposed Action: Reissuing 10-year term grazing permits to continue authorizing cattle grazing, on eight allotments on the Tushar Mountain Range within the Beaver Ranger District, is proposed. Implementation of existing Allotment Management Plans (AMPs) would prescribe the manner and extent to which livestock operations would be conducted and would: (1) Develop allotment specific objectives which would direct livestock management to either maintain desired conditions or improve rangelands to desired conditions, (2) authorize management of livestock and construction or maintenance of improvements which would result in meeting objectives, (3) develop action plans to meet resource goals, objectives, and management requirements for a wide array of rangeland resources and uses concurrent with livestock grazing, (4) incorporate Land and Resource Management Plan (Forest Plan) standards and guidelines (as amended) for forage utilization and riparian area management, and (5) develop a monitoring plan that describes a measurable means of determining whether goals and objectives are being met. This proposed action does not intend to address livestock capacity and stocking rates. The number and class of livestock, season of use, and grazing system required to meet desired conditions is a permit administration decision, not a NEPA decision. Changes in numbers and seasons would not be adressed by the proposed action or alternative(s). The proposal does not intend to change the grazing systems currently in use. None of the project allotments require new structural range improvements (fences or water developments) for cattle management. The proposed action does include provision for maintenance of existing structural and non-structural range improvements. Vegetation type-conversions (sagebrush and pinion-juniper to grass/forb types) would be subject to periodic maintenance on the North-Indian Creek, Marysvale,

Circleville, Ten Mile, Cottonwood, South Beaver, and Pine Creek/ Sulphurdale Allotments. Maintenance of existing structural range improvements would include 113 miles of fences, 27 cattle guards, 48 developed springs, 48 stock ponds, 29 miles of pipeline, and 60 watering troughs. Noxious weed infestations would require treatment on all of the allotments except Ten Mile, Junction, and Cottonwood.

Purpose and Need for Action: The purpose of the proposed action is to authorize and conduct cattle grazing, on allotments included in this analysis, according to direction and objectives of the Forest Plan and in compliance with applicable laws, regulations, and policies. Term grazing permits and associated AMPs currently authorize cattle grazing on the Beaver Ranger District. The proposed action is needed to address significant grazing issues, relate existing conditions to desired conditions, and to conduct analysis in accordance with Section 504 of Pub. L. 104–19 (Rescission Bill, Signed 7/27/95) which directed the Forest Service to complete NEPA analysis on all grazing allotments. The Forest Plan provides the overall guidance for management activities in the potentially affected area through its goals, objectives, standards and guidelines, and management area direction.

Nature of Decision To Be Made: The decision to be made is ''should 10-year term grazing permits be reissued to authorize continued cattle grazing on the eight allotments within the Tushar Mountain Range on the Beaver Ranger District.'' If the decision is to reissue term grazing permits to continue cattle grazing, then management prescriptions, detailed in AMPs, will be implemented to outline how livestock will be grazed and to ensure compliance with Forest Plan direction.

Possible Alternatives: The Forest Service will consider a range of alternatives. One of these will be the ''no grazing'' alternative, in which no grazing by domestic livestock would be allowed and all structural range improvements currently in place for control or management of livestock would be removed. New term grazing permits would not be issued as current permits expire. In ten years, this area would not provide any grazing for domestic livestock. Additional grazing alternatives will be considered in response to issues and other resource values. The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on both private and National Forest lands will be considered. The EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

Scoping Process: Public participation is an important part of the analysis, commencing with the initial scoping process (40 CFR 1501.7), which began in February 1998. At that time, an Interdisciplinary Team of Forest Service resource specialists conducted an in-depth analysis of 36 cattle allotments (including the 8 allotments in this proposed action) and 6 sheep allotments in a Forest-wide multi-allotment level environmental assessment. A final decision was made, which was subsequently appealed, pursuant to 36 CFR 215.17, and Fishlake National Forest Supervisor Rob Mwroka withdrew the decision in June 2000. Based on the complexities of the original EA, the Forest Supervisor decided to complete an environmental analysis that only addressed forage utilization criteria, and to incorporate new use criteria through an amendment to the Forest Plan. This EA was completed during 2001 and the Decision Notice was signed in February 2002 directing incorporation of the revised criteria into Part 3 of the Term Grazing Permits. Concurrently, and upon review of the environmental analysis process and varying public interests, the Forest Supervisor decided that separate Environmental Impact Statements (EISs), for each group of allotments on each of the Forest's four mountain ranges and respective ranger districts, would be prepared to assess the effects of authorizing and permitting livestock grazing. Public comments received during the completion of the original multi-allotment Forest-wide EA referenced above will be incorporated into this EIS analysis process. A disclosure of the effects of livestock grazing on the following resources and activities will be provided: riparian areas, endangered and sensitive plant and wildlife species habitats, soil and water quality within the allotments, forage competition between elk and livestock, conflicts with recreational activities, potential spread of noxious weeds, effect of livestock and their management on cultural resources, and economic stability of the local and regional agricultural communities. This list will be verified, expanded, refined, or modified based on public scoping for this proposal.

Comments Requested: In addition to this scoping, the public may visit Forest Service officials at any time during the analysis and prior to the decision. The Forest Service is seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations that may be interested in or affected by the proposed action. No public meetings are scheduled at this time. Comments will be used to identify any additional issues that should be addressed in the environmental impact statement. The analysis is being conducted in compliance with the National Environmental Policy Act (NEPA) and is designed to inform the Responsible Official of the potential environmental consequences of continued livestock grazing on these eight allotments and to identify any changes in grazing practices that should be considered. The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by or prior to June of 2004. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in management of the eight project allotments on the Beaver Ranger District participate at that time. To be most helpful, comments on the Draft EIS should be as site-specific as possible. The Final EIS is scheduled to be completed by September 2004.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement (DEIS) will be prepared for comment. The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed

action participate by the close of the 30-day scoping comment period (April 1, 2004) so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final Environmental Impact Statement. To assist the Forest Service in identifying and considering issues on the proposed action, comments should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: March 1, 2004.

Mary Erickson,

Forest Supervisor, Fishlake National Forest.

[FR Doc. 04–5463 Filed 3–10–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Meeting of the Land Between the Lakes Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Land Between the Lakes Advisory Board will hold a meeting on Friday, April 2, 2004. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

The meeting agenda includes the following:

(1) Welcome/introductions/agenda;

(2) LBL Land and Resource Management Plan (LRMP) process update;

(3) Information session presentation & critique for the LRMP;

(4) Summary of changes, preferences, and discussion;

(5) Planning schedule;

(6) Board discussion of comments received.

The meeting is open to the public. Written comments are invited and may be mailed to: William P. Lisowsky, Area Supervisor, Land Between the Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211. Written comments must be received at Land Between the Lakes by March 25, 2004, in order for copies to be provided to the members at the meeting. Board members will review written comments received, and at their request, oral clarification may be requested at a future meeting.

DATES: The meeting will be held on Friday, April 2, 2004, 8:30 a.m. to 12:15 p.m., c.s.t.

ADDRESSES: The meeting will be held at Brandon Spring Group Camp, Land Between the Lakes, and will be open to the public.

FOR FURTHER INFORMATION CONTACT: Sharon Byers, Advisory Board Liaison, Land Between the Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211, 270–924–2002.

SUPPLEMENTARY INFORMATION: None.

Dated: March 5, 2004.

William P. Lisowsky,

Area Supervisor, Land Between the Lakes.

[FR Doc. 04–5442 Filed 3–10–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake County Resource Advisory Committee (RAC) will hold a meeting.

DATES: The meeting will be held on April 29, 2004, from 3 p.m. to 6 p.m.

ADDRESSES: The meeting will be held at the Lake County Board of Supervisor's Chambers at 255 North Forbes Street, Lakeport.

FOR FURTHER INFORMATION CONTACT: Debbie McIntosh, Committee Coordinator, USDA, Mendocino National Forest, Upper Lake Ranger District, 10025 Elk Mountain Road, Upper Lake, CA 95485. (707) 275–2361; E-mail *dmintosh@fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Roll Call/Establish Quorum; (2) Review and Approval of the Minutes of the January 15, 2004 Meeting; (3) Finalize business for 2003; (4) Reevaluate Previously Submitted Projects Not Approved; (5) Discuss and Set Field Trip Dates; (6) RAC New Letter; (7) Discuss Appointments to RAC for Second Terms; (8) Review New Project for 2004; (9) Recommend Projects for 2004; (10) Discuss Project Cost Accounting USFS/County of Lake; (11) Set next Meeting Date and; (12) Public Comment Period. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: March 4, 2004.

Blaine P. Baker,

Designated Federal Officer.

[FR Doc. 04–5468 Filed 3–10–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Revisions of the Land and Resource Management Plan for the Malheur, Umatilla, and Wallowa-Whitman National Forests, Land and Resource Management Plans, Pacific Northwest Region, OR, WA, and ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to revise the Land and Resource Management Plans (Forest Plans) for the Malheur, Umatilla, and Wallowa-Whitman National Forests.

SUMMARY: This notice announces the intent of the Malheur, Umatilla, and Wallowa-Whitman National Forests to revise their respective Land and Resource Management Plans (Forest Plans) under the 1982 planning regulations (36 CFR part 219). Initial steps of the revision process will focus on information needs, resource inventory reviews, establishing a public collaboration process, and identifying needed changes.

ADDRESSES: Send written comments concerning this notice to Dave Schmitt, Blue Mountains Forest Plan Revision Team Leader, 1550 Dewey Avenue, P.O. Box 907, Baker City, OR 97814. Send electronic correspondence on the forest plan revision to *tpaulsen@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Tami Paulsen, Public Affairs Specialist, Blue Mountains Forest Plan Revision Team (541) 523–1332.

SUPPLEMENTARY INFORMATION: The Forest Plans for the Malheur, Umatilla, and Wallowa-Whitman National Forests were completed in May, June, and April of 1990 (respectively) and will remain in effect and continue to be implemented until the Plans are revised. This notice addresses initiation of revision. Once the scope of the revision is better understood the Forests will issue a Notice of Intent to prepare an Environmental Impact Statement, which will initiate the Analysis process outlined in the National Environmental Policy Act.

The Forest Service is preparing new planning regulations, which may be

issued while the Malheur, Umatilla, and Wallowa-Whitman National Forests Plans are still in the revision process. These new regulations will reflect the latest national direction on land management planning and the Forests may consider completing the Plan Revision under the new planning regulations when they are finalized. It is anticipated the new planning regulations will allow such a change. An additional Notice will be issued if the Forests decide to switch to the new, final planning regulations.

Dated: March 4, 2004.

Linda Goodman,

Regional Forester.

[FR Doc. 04–5454 Filed 3–10–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Federal Grants and Cooperative Agreements

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of training conference.

SUMMARY: The Natural Resources Conservation Service (NRCS) is announcing a forthcoming training conference for Federal Grants and Cooperative and Contribution Agreements. Special emphasis will be placed on clarifying the grants and agreements process with emphasis on the competitive process.

DATES: The training conference date is: April 26–30, 2004, 8 a.m. to 5 p.m. A block of rooms has been reserved under USDA/NRCS at the Sheraton New Orleans Hotel, 500 Canal Street, New Orleans, Louisiana, telephone: 1–888–627–7033, on a first come first serve basis. The Marriott New Orleans Hotel (directly across the street), 550 Canal Street, New Orleans, Louisiana, telephone 1–888–364–1200 will become the overflow hotel site. A room rate has been set at $146.00 and all reservations must be guaranteed by April 2, 2004.

ADDRESSES: The training conference will take place at the Sheraton New Orleans Hotel, 500 Canal Street, New Orleans, Louisiana, telephone: 1–888–627–7033.

FOR FURTHER INFORMATION CONTACT: Questions or comments should be directed to Edward Biggers, Jr., Director, Management Services Division, telephone: (202) 720–4102; fax: (202) 720–7149; e-mail: *Edward.biggers@usda.gov* or Rosann Durrah, telephone: (202) 720–4072; fax: (202) 690–0639; e-mail: *Rosann.durrah@usda.gov.*

SUPPLEMENTARY INFORMATION: Notice of this conference is given under the Federal Grant and Cooperative Agreement Act of 1977, 31 U.S.C. 6301–6308. The conference is designed for leaders, administrators, partners, non-government officials, program managers, specialists, management analysts, and others involved with operations, agreements/grants, evaluations, administration, decision process, auditing, program management, budgeting, contracting, and program delivery. Participants will learn: Competing Grants and Agreements, Contribution Agreements, Authorities, Policies, and Earmarks, Roles and Responsibilities, and Cost Analysis and Evaluation of Proposals.

Dated: March 8, 2004.

Helen V. Huntington,

Federal Register Liaison, Natural Resources Conservation Service.

[FR Doc. 04–5555 Filed 3–10–04; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Golden Valley Electric Association, Inc.; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact (FONSI) for a project proposed by Golden Valley Electric Association, Inc., (GVEA) of Fairbanks, Alaska. The project consists of constructing a 138kV transmission line between the GVEA North Pole Power Plant, North Pole, Alaska, and the Carney Substation, which is approximately 22 miles southeast of North Pole.

FOR FURTHER INFORMATION CONTACT: Nurul Islam, Environmental Protection Specialist, U.S. Department of Agriculture, RUS, Engineering and Environmental Staff, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone (202) 720–1414, Fax: (202) 720–0820, e-mail: *nurul.islam@usda.gov.* Information is also available from Mr. Greg Wyman, Manager of Construction Services, GVEA, PO Box 71249, Fairbanks, Alaska 99707–1249, telephone (907) 451–5629. His e-mail address is: *gwyman@gvea.com.*

SUPPLEMENTARY INFORMATION: GVEA proposes to construct the North Pole to Carney Substation 138kV Transmission Line Project, which is approximately 22 miles in length. The primary purpose of the facility is to meet the projected future increases in regional power requirements and to improve the quality of service to existing customers. To accommodate the new transmission line, a new substation would be built next to the existing North Pole Power Plant which is located near the Williams Alaska Petroleum Refinery. In addition, GVEA would modify the existing Carney Substation to provide an additional breaker to allow for termination of the transmission line. The modification of the Carney Substation work would take place within the existing substation footprint. The proposed transmission line would be single circuit, with three-phase, constructed to operate at a voltage of 138 kV and supported by wood-pole, H-frame structures that would be approximately 75 ft. in height. The line would be constructed within a right-of-way that would be approximately 100 ft. in width.

Alternatives to the proposed project are discussed in detail in the environmental assessment (EA). They include no action, load management, purchase of power, upgrading of the existing line, construction of a new transmission line, substation locations, etc. Based on the analysis, the construction of a new transmission line, a new substation at the North Pole Power Plant, and modifications to the Carney Substation were found to meet the purpose and need for the project.

GVEA submitted an environmental report (ER) to RUS, which addresses the potential environmental impacts of the project. The ER includes input from federal, state, and local agencies. RUS has reviewed and accepted the ER as RUS' EA for the project in accordance with RUS' Environmental Policies and Procedures, 7 CFR 1794.41. The EA was made available to Federal, State, and local government agencies for their review and comments. GVEA published notices of the availability of the EA for public review in the Fairbanks Daily News Miner on January 17 and 18, 2004. The EA was also made available for public review at the Noel Wien Public Library, North Pole City Library, and RUS office in Washington, DC. The 30-day comment period on the EA for the project ended on February 20, 2004. The Department of Natural Resources, Office of the Habitat Management and Permitting (OHMP); Office of the History and Archaeology; Bureau of Land Management (BLM); and the

Alyeska Pipeline Service Company (APSC) have commented on the project. No public comments were received on the EA.

A Habitat Permit from the OHMP will be required for equipment crossings and snow ramp/ice road construction over the anadromous streams. GVEA will obtain all necessary permits including the Habitat Permit from OHMP. The BLM would be responsible for issuing an authorization for third party use of military reservation lands that would be withdrawn for use other than military purposes under Pub. L. 105–65. The State Historic Preservation Officer (SHPO) of Alaska recommended an archaeological survey of the final route for the transmission line. GVEA will conduct an archaeological survey and the survey report will be made available to SHPO for review and comment. No construction related activities will be undertaken prior to final approval from SHPO and RUS. GVEA has agreed to consult with APSC on final routing of the transmission line when it would be necessary either to cross or be near the pipeline.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by the 7 CFR part 1794, RUS Environmental Policies and Procedures.

Dated: March 4, 2004.

Blaine D. Stockton,

Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 04–5426 Filed 3–10–04; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Public Television Station Digital Transition Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Utilities Service (RUS) is announcing the process by which Fiscal Year 2004 funding of its pilot grant program to finance the conversion of television services from analog to digital broadcasting for public television stations serving rural areas will be made available. For Fiscal Year 2004, $14 million in grants will be made available for the continued funding of the national competition announced on July 18, 2003, to enable public television stations that serve substantial rural populations to continue serving their coverage areas.

DATES: Successful grant applicants will be notified no later than March 31, 2004.

FOR FURTHER INFORMATION CONTACT: Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1590, Room 5151, Washington, DC 20250–1590. Telephone number (202) 720–9554, Facsimile (202) 720–0810.

SUPPLEMENTARY INFORMATION: On July 18, 2003, RUS published a Notice of Funds Availability (NOFA) in the **Federal Register** at 68 FR 42680 announcing its ''public television station digital transition'' grant program to finance the conversion of television services from analog to digital broadcasting for public television stations serving rural areas. Fifteen million dollars in grant authority was made available to finance digital conversions.

As part of the nation's evolution to digital television, the Federal Communications Commission (FCC) has ordered all television broadcasters to initiate the broadcast of a digital television signal by May 1, 2003, and to cease analog television broadcasts on December 31, 2006. About half of the nation's 357 public television stations did not meet the deadline to initiate digital broadcasting, and have received extensions to as late as May 1, 2004, to do so.

The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill, 2003, authorized $51,941,000 for the Distance Learning and Telemedicine program. The Committee Recommendations specify that of the funds provided for Distance Learning and Telemedicine, $15,000,000 should be made available in grants for public broadcasting systems to meet the FCC's mandate.

Public television stations rely largely on community financial support to operate. In many rural areas the cost of the transition to digital broadcasting may exceed community resources. Since rural communities depend on public television stations for services ranging from educational course content in their schools to local news, weather, and agricultural reports, any disruption of public television broadcasting would be detrimental.

In response to its NOFA, RUS received 46 applications totaling more than $45 million in funding requests. As part of a national competition, RUS reviewed the applications for applicant and project eligibility and scored the applications according to the rurality of the applicant's digital television coverage area, the average per capita income of the applicant's digital television cover area, and critical need. On February 20, 2004, Secretary of Agriculture, Ann Veneman, announced the 16 highest scoring grants totaling $15,000,000. This announcement fully utilized RUS' 2003 appropriation.

On January 23, 2004, the Consolidated Appropriations Act of 2004 was enacted which provided $39 million for grants for telemedicine and distance learning services in rural areas provided that $14 million is made available to convert analog to digital operation those noncommercial educational television broadcast stations that serve rural areas and are qualified for Community Service Grants by the Corporation for Public Broadcasting under section 396(k) of the Communications Act of 1934, including associated translators, repeaters, and studio-to-transmitter links. Due to the overwhelming response to the July 18, 2003, NOFA, RUS has eligible applications on hand totaling more than the $14 million appropriation received for Fiscal Year 2004. To eliminate the need for fully eligible applicants to resubmit applications for Fiscal Year 2004, RUS will utilize its 2004 appropriation by funding eligible projects submitted in accordance with the July 18, 2003, NOFA. Announcement of the 2004 appropriation grant awards will be made no later than March 31, 2004.

Dated: March 8, 2004.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 04–5496 Filed 3–10–04; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–803]

Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review: Cut-to-Length Carbon Steel Plate From Romania

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for the preliminary results of the 2002–2003 administrative review of the antidumping duty order on cut-to-length carbon steel plate from Romania. This

review covers one manufacturer/exporter of the subject merchandise to the United States and the period August 1, 2002 through July 31, 2003.

EFFECTIVE DATE: March 11, 2004.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam at (202) 482–5222, Michael Heaney at (202) 482–4475, or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Statutory Time Limits: Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested, and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background: On September 30, 2003, in response to a request from the petitioners, International Steel Group, we published a notice of initiation of this administrative review in the *Federal Register. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part and Deferral of Administrative Review*, 68 FR 56262 (September 30, 2003). Pursuant to the time limits for administrative reviews set forth in section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the current deadlines are May 2, 2004 for the preliminary results and August 30, 2004, for the final results.

Extension of Time Limit for Preliminary Results of Review: It is not practicable to complete this review within the normal statutory time limit due to a number of significant case issues, such as, the collection of surrogate market values, the reporting and analysis of both non-market economy and market economy data for different parts of the twelve-month review period, and complex cost data. Therefore, the Department is extending the time limits for completion of the preliminary results by 120 days, until August 30, 2004, in accordance with section 751(a)(3)(A) of the Tariff Act. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act.

Dated: March 3, 2004.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 04–5543 Filed 3–10–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Completion of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of completion of panel review of the final remand determination made by the U.S. International Trade Administration, in the matter of Gray Portland Cement and Clinker from Mexico, Secretariat File No. USA–MEX–99–1904–03.

SUMMARY: Pursuant to the Order of the Binational Panel dated January 22, 2004, affirming the final remand determination described above was completed on March 4, 2004.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On January 22, 2004, the Binational Panel issued an order which affirmed the final remand determination of the United States International Trade Administration (ITA) concerning Gray Portland Cement and Clinker from Mexico. The Secretariat was instructed to issue a notice of completion of panel review on the 31st day following the issuance of the notice of final panel action, if no request for an extraordinary challenge was filed. No such request was filed. Therefore, on the basis of the panel order and rule 80 of the *Article 1904 Panel Rules,* the panel review was completed and the panelists discharged from their duties effective March 4, 2004.

Dated: March 5, 2004.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 04–5491 Filed 3–10–04; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker From Mexico; Notice of NAFTA Binational Panel's Final Decision and Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of NAFTA Binational Panel's final decision and amended final results of antidumping duty administrative review.

SUMMARY: On January 22, 2004, the Binational Panel issued its final decision with respect to the final results of administrative review of the antidumping duty order on gray portland cement and clinker from Mexico covering the period August 1, 1996, through July 31, 1997. As there is now a final and conclusive decision in this case, we are amending the final results of review and we will instruct U.S. Customs and Border Protection to liquidate entries subject to this review.

EFFECTIVE DATE: March 11, 2004.

FOR FURTHER INFORMATION CONTACT: Brian Ellman or Mark Ross, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4852 or (202) 482–4794, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 1999, the Department of Commerce (the Department) published in the **Federal Register** the final results of the administrative review of the antidumping duty order on gray portland cement and clinker from Mexico (64 FR 13148) (*Seventh Review Final Results*). The Department collapsed CEMEX, S.A. de C.V.

(CEMEX), and GCC Cemento, S.A. de C.V. (GCCC),[1] in the determination.

CEMEX, GCCC, and the Southern Tier Cement Committee (the petitioner) contested various aspects of the Department's *Seventh Review Final Results*. On May 30, 2002, the Article 1904 Binational Panel (the Panel) issued an order in *Gray Portland Cement and Clinker from Mexico; Final Results of the Seventh Antidumping Administrative Review*, Secretariat File No. USA–MEX–99–1904–03 (May 30, 2002) (*First Remand Order*), remanding to the Department the *Seventh Review Final Results*.

In the *First Remand Order*, the Panel instructed the Department to do the following: (1) Explain why its findings regarding the difference in freight costs, the relative profit levels, the number and type of customers, and the disparity in handling charges support the Department's determination that sales of Type V cement sold as Type I cement were outside the ordinary course of trade, (2) explain the basis of its decision to assess duties on merchandise destined for consumption outside the region, with particular reference to the requirements of the U.S. Constitution, (3) reconsider its decision that sales by CEMEX of bag and bulk cement should be classified as the same like product and that sales of CEMEX's bag and bulk cement were made at the same level of trade, (4) reconsider its decision to treat U.S. warehousing expenses of CEMEX and CDC as indirect selling expenses, (5) make the appropriate adjustment to normal value for CEMEX's home-market pre-sale warehousing expenses, (6) reconsider its decision to treat CDC's sales to unaffiliated U.S. customers as indirect export-price (EP) sales instead of constructed-export-price (CEP) sales in light of the decision of the Court of Appeals for the Federal Circuit (CAFC) in *AK Steel Corp.* v. *United States*, 226 F.3d 1361 (2000), (7) correct errors it made in its calculation of the difference-in-merchandise (DIFMER) adjustment and explain its DIFMER decision further, and (8) explain its decision further to allow CEMEX an adjustment for home-market freight expenses. The Department responded to the *First Remand Order* in its remand redetermination in *Gray Portland Cement and Clinker from Mexico; Final Results of the Seventh Antidumping Administrative Review; Final Results of Redetermination Pursuant to NAFTA Panel*, September 27, 2002 (*First Remand*).

On April 11, 2003, the Panel issued an order in *Gray Portland Cement and Clinker from Mexico; Final Results of the Seventh Antidumping Administrative Review*, Secretariat File No. USA–MEX–99–1904–03 (April 11, 2003) (*Second Remand Order*), remanding to the Department its remand redetermination in the *First Remand*. In the *Second Remand Order*, the Panel instructed the Department to determine whether the U.S. sales by CDC should be compared to the home-market sales of Type V cement sold as Type I cement by CEMEX. The Department responded to the *Second Remand Order* in its remand redetermination in *Gray Portland Cement and Clinker from Mexico; Final Results of the Seventh Antidumping Administrative Review; Final Results of Redetermination Pursuant to NAFTA Panel*, May 27, 2003 (*Second Remand*).

On September 4, 2003, the Panel issued an order in *Gray Portland Cement and Clinker from Mexico; Final Results of the Seventh Antidumping Administrative Review*, Secretariat File No. USA–MEX–99–1904–03 (September 4, 2003) (*Third Remand Order*), remanding to the Department its remand redetermination in the *Second Remand*. In the *Third Remand Order*, the Panel instructed the Department not to use the adverse facts available it had applied in determining the margins on U.S. sales by CEMEX when calculating the importer-specific assessment rate for CDC. The Department responded to the *Third Remand Order* in its remand redetermination in *Gray Portland Cement and Clinker from Mexico; Final Results of the Seventh Antidumping Administrative Review*, Secretariat File No. USA–MEX–99–1904–03 (September 15, 2003) (*Third Remand*).

On November 25, 2003, the Panel issued an order in *Gray Portland Cement and Clinker from Mexico; Final Results of the Seventh Antidumping Administrative Review*, Secretariat File No. USA–MEX–99–1904–03 (November 25, 2003) (*Fourth Remand Order*), remanding to the Department its remand redetermination in the *Third Remand*. In the *Fourth Remand Order*, the Panel instructed the Department to calculate separate importer-specific assessment rates for CDC and CEMEX and not to apply adverse facts available with respect to the calculation of normal value for CDC. The Department responded to the *Fourth Remand Order* in its remand redetermination in *Gray Portland Cement and Clinker from Mexico; Final Results of the Seventh Antidumping Administrative Review*, Secretariat File No. USA–MEX–99–1904–03 (December 16, 2003) (*Fourth Remand*).

On January 22, 2004, the Panel issued an order affirming the Department's *Fourth Remand*, and on February 2, 2004, the NAFTA Secretariat issued a notice of final panel action. See *Gray Portland Cement and Clinker from Mexico; Final Results of the Seventh Antidumping Administrative Review*, Secretariat File No. USA–MEX–99–1904–03 (January 22, 2004, and February 2, 2004, respectively).

Amendment to Final Results

Pursuant to section 516A(g) of the Tariff Act of 1930, as amended (the Act), we are now amending the final results of the administrative review of the antidumping duty order on gray portland cement and clinker from Mexico for the period August 1, 1996, through July 31, 1997. Based on the final results of redetermination on remand, the weighted-average antidumping margin for CEMEX and GCCC changes from 49.58 percent, calculated in the *Seventh Review Final Results*, to 37.34 percent.

The Department will determine and U.S. Customs and Border Protection will assess appropriate antidumping duties on entries of the subject merchandise exported by firms covered by this review. We will issue appropriate assessment instructions directly to CBP within 15 days of publication of these amended final results of review.

We are issuing and publishing this determination and notice in accordance with section 516A(g) of the Act.

Dated: March 5, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–5544 Filed 3–10–04; 8:45 am]

BILLING CODE 3510–DS–P

[1] Cementos de Chihuahua, S.A. de C.V. (CDC), was GCCC's formal name during this segment of the proceeding.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Petition under the Andean Trade Promotion and Drug Eradication Act (ATPDEA), the African Growth and Opportunity Act (AGOA) and the United States - Caribbean Basin Trade Partnership Act (CBTPA)

March 8, 2004.

AGENCY: The Committee for the Implementation of Textile Agreements

ACTION: Request for public comments concerning a petition for a determination that round cut 10-wale

per inch cotton corduroy cannot be supplied by the domestic industry in commercial quantities in a timely manner under the ATPDEA, AGOA and CBTPA.

SUMMARY: On March 5, 2004, the Chairman of CITA received a petition from S. Schwab Company Inc. alleging that smooth, round cut 10-wale per inch (4-wale per centimeter) 100% cotton corduroy for use in manufacturing apparel articles, classified in subheading 5801.22.90 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requests that apparel articles of such fabrics be eligible for preferential treatment under the ATPDEA, the AGOA and the CBTPA. CITA hereby solicits public comments on this petition, in particular with regard to whether this fabric can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by March 26, 2004 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution, N.W., Washington, D.C. 20230

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 112(b)(5)(B) of the AGOA; Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Sections 1 and 6 of Executive Order No. 13191 of January 17, 2001; Presidential Proclamations 7350 and 7351 of October 4, 2000; Section 204 (b)(3)(B)(ii) of the ATPDEA, Presidential Proclamation 7616 of October 31, 2002, Executive Order 13277 of November 19, 2002, and the United States Trade Representative's Notice of Further Assignment of Functions of November 25, 2002.

BACKGROUND:

The ATPDEA, the AGOA and the CBTPA provide for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States. The ATPDEA, the AGOA, and the CBTPA also provide for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more ATPDEA, AGOA, or CBTPA beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191 (66 FR 7271) and pursuant to Executive Order No. 13277 (67 FR 70305) and the United States Trade Representative's Notice of Redelegation of Authority and Further Assignment of Functions (67 FR 71606), CITA has been delegated the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA, the CBTPA, or the ATPDEA. On March 6, 2001, CITA published procedures that it will follow in considering requests (66 FR 13502).

On March 5, 2004, the Chairman of CITA received a petition from S. Schwab Company Inc. alleging that smooth, round cut 10-wale per inch (4-wale per centimeter) 100% cotton corduroy for use in manufacturing apparel articles, classified in subheading 5801.22.90 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the ADPTEA, the AGOA and the CBTPA for apparel articles that are cut and sewn in one or more ADPTEA, AGOA or CBTPA beneficiary countries from such fabrics.

CITA is soliciting public comments regarding this request, particularly with respect to whether this fabric can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabric for purposes of the intended use. Comments must be received no later than March 26, 2004. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that this fabric can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabric stating that it produces the fabric that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–5601 Filed 3–9–04; 10:44 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Request under the United States-Caribbean Basin Trade Partnership Act (CBTPA)

March 8, 2004.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a request for a determination that apparel made from 100 percent cotton woven flannel fabrics made from 14 through 41 NM single ring-spun yarns of different colors cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On March 4, 2004, the Chairman of CITA received a petition from Dillard's, Inc. and BWA, Inc. alleging that 100 percent cotton woven flannel fabrics made from 14 through 41 NM single ring-spun yarns of different colors, classified in subheading 5208.43.00 of the Harmonized Tariff Schedule of the United States (HTSUS) of 2 X 1 twill weave construction, weighing not more than 200 grams per square meter, for use in apparel articles, excluding gloves, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requests that apparel of such fabrics cut and sewn in one or more CBTPA beneficiary country be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on this request, in particular with regard to whether such fabrics can be supplied by the domestic industry in commercial quantities in a timely manner.

Comments must be submitted by March 26, 2004 to the Chairman, Committee for the Implementation of Textile Agreements, room 3001, United States Department of Commerce, 14th and Constitution Avenue, N.W. Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act (CBERA), as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

BACKGROUND:

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States or a beneficiary country. The CBTPA also authorizes quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary country from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191 (66 FR 7271), the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures in the **Federal Register** that it will follow in considering requests. (66 FR 13502).

On March 4, 2004, the Chairman of CITA received a petition from Dillards, Inc. and BWA, Inc. alleging that 100 percent cotton woven flannel fabrics, made from 14 through 41 NM single ring-spun yarns of different colors, classified in 5208.43.00 of the HTSUS, of 2 X 1 twill weave construction, weighing not more than 200 grams per square meters, for use in apparel articles, excluding gloves, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for apparel articles that are both cut and sewn in one or more CBTPA beneficiary country from such fabrics.

CITA is soliciting public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabrics for purposes of the intended use. Comments must be received no later than March 26, 2004. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabrics stating that it produces the fabrics that are the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–5600 Filed 3–9–04; 10:45 am]

BILLING CODE 3510–DR–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; OMB Emergency Approval Request

AGENCY: Corporation for National and Community Service.

ACTION: Request for emergency approval.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted three information collection requests (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). The Corporation requests that OMB review and approve its three emergency requests by March 16, 2004, for a period of six (6) months. A copy of this ICRs, with applicable supporting documentation, may be obtained by contacting the Corporation for National and Community Service, Attn: Ms. Shannon Maynard, at (202) 606–5000, ext. 428, or by e-mail at *smaynard@cns.gov*.

Currently, the Corporation is soliciting emergency approval concerning the Spirit of Service Award nomination guidelines for Senior Corps, AmeriCorps, and Learn and Serve America.

Part I

Type of Review: Emergency.
Agency: Corporation for National and Community Service.
Title: Spirit of Service Awards Nomination Guidelines and Application—Senior Corps.
OMB Number: None.
Agency Number: None.
Affected Public: Individuals or households, not-for-profit institutions, and State, local or tribal government.
Total Respondents: 200.
Frequency: One time.
Average Time Per Response: 3 hours.
Estimated Total Burden Hours: 600 hours.
Total Burden Cost (Capital/Startup): $9,900.
Total Burden Cost (Operating/Maintenance): $0.

Part II

Type of Review: Emergency.
Agency: Corporation for National and Community Service.
Title: Spirit of Service Awards Nomination Guidelines and Application—AmeriCorps.
OMB Number: None.
Agency Number: None.
Affected Public: Individuals or households, not-for-profit institutions, and State, local or tribal government.
Total Respondents: 200.
Frequency: One time.
Average Time Per Response: 3 hours.
Estimated Total Burden Hours: 600 hours.
Total Burden Cost (Capital/Startup): $9,900.
Total Burden Cost (Operating/Maintenance): $0.

Part III

Type of Review: Emergency.

Agency: Corporation for National and Community Service.

Title: Spirit of Service Awards Nomination Guidelines and Application—Learn and Serve America.

OMB Number: None.

Agency Number: None.

Affected Public: Individuals or households, not-for-profit institutions, and State, local or tribal government.

Total Respondents: 200.

Frequency: One time.

Average Time Per Response: 3 hours.

Estimated Total Burden Hours: 600 hours.

Total Burden Cost (Capital/Startup): $9,900.

Total Burden Cost (Operating/Maintenance): $0.

Description: The Spirit of Service Awards enable the Corporation to recognize exceptional organizations and program participants from each of the Corporation's three programs, Senior Corps, AmeriCorps, and Learn and Serve America. For 2004, the Corporation plans to establish specific nomination guidelines for each of the programs and develop a formal nomination process, which involves voluntary information collection from non-government individuals.

Prior to 2003, AmeriCorps recognized its outstanding members annually through the All-AmeriCorps Awards, which were initiated in 1999 and presented by President Clinton as part of the 5th anniversary celebration of the program. Senior Corps had recognized its outstanding projects and volunteers at its own national conference, and Learn and Serve America recognized exemplary programs and participants through its Leaders School selection and the President's Student Service Awards.

The Corporation hereby submits its request for emergency review and approval by OMB of the Spirit of Service Awards nomination for its three programs. The goal is to implement the nomination process in time to present the Spirit of Service Award winners at the Corporation's 2004 National Conference on Community Volunteering and National Service, June 6–8, 2004, in Kansas City, Missouri. The Corporation has requested emergency status for six (6) months to enable it to proceed with this year's awards process in a timely manner. Because the conference is scheduled to take place in June 2004, there was not enough time for an initial public comment period prior to submitting this request to OMB. However, if OMB approves this emergency request, the Corporation will issue another notice that will afford the public 60-days to provide its comments.

Dated: March 5, 2004.

Sandy Scott,

Acting Director, Office of Public Affairs.

[FR Doc. 04–5490 Filed 3–10–04; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Department of Defense, Defense Security Service.

ACTION: 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 5/15/2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Security Service.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call the Defense Security Service at (703) 325–6182.

Title, Associated Forms, and OMB Number: Defense Security Service FL 14–a, Medical Information Questionnaire, July 2003, OMB No. 0704–0206

Needs and Uses: The specific objective of a personnel security investigation is to elicit information concerning the loyalty, character, and reliability of the individual being investigated so that the DoD adjudicator may determine if it is clearly consistent with the interests of national security to grant the individual access to classified information (or to continue such access), or to place the individual (or retain them) in a sensitive national security position. Adjudicative determinations are made in accordance with DoD 5200.2–R, ''DoD Personnel Security Program,'' which requires the DoD adjudicator to consider both potentially disqualifying information and mitigating information when there is an indication that the individual has a history of mental or nervous disorder; use or abuse of prescribed or illegal drugs, such as marijuana, narcotics or barbiturates; or abuse or excessive use of alcohol. Much of the appropriate information which the adjudicator must consider can only be obtained from physicians who have treated the individual. Obtaining such information provides the adjudicator with a complex picture of the individual. Without it, the adjudicator may not be able to make a determination as to whether or not the individual should be granted access to classified information.

Affected Public: Individuals, business, or households.

Annual Burden Respondents: 11,700.

Number of Burden Hours: 7,020.

Number of Respondents: 11,700.

Responses Per Respondent: 1.

Average Burden Per Response: 0.6 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

See ''Needs and Uses''.

Dated: March 4, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–5459 Filed 3–10–04; 8:45 am]

BILLING CODE 5001–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense Education Activity (DoDEA), DoD.

ACTION: Open meeting notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, appendix 2 of title 5, United States Code, Public Law 92–463, notice is hereby given that a meeting of the Advisory Council on Dependents' Education (ACDE) is scheduled to be held on April 30, 2004, from 8 a.m. to 5 p.m. The meeting will be held at the New Sanno Hotel, 4–12–20 Minami-Azabu, Minato-ku, Tokyo 106–00047, Japan. The purpose of the ACDE is to recommend to the Director, DoDEA, general policies for the operation of the Department of Defense Dependents Schools (DoDDS); to provide the Director with information about effective educational programs and practices that should be considered by DoDDS; and to perform other tasks as may be required by the Secretary of Defense. The meeting emphases will be the current operational qualities of schools and the institutionalized school improvement processes, as well as other educational matters. For further information contact Mr. Jim Jarrard, at 703–588–3121 or at *jjarrard@hq.odedodea.edu*.

Dated: March 4, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–5458 Filed 3–10–04; 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 April 13–14, 2004; May 20–21, 2004; June 23–24, 2004; and July 29–30, 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 development 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: March 4, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–5460 Filed 3–10–04; 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 meetings.

SUMMARY: The Defense Science Board Task Force on Corrosion Control will meet in closed sessions on March 15–16, 2004, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will address corrosion control throughout a combat system's life cycle: Design, construction, operation and maintenance.

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. At this meeting, the Task Force will assess current on-going corrosion control efforts across the Department of Defense with particular attention to: Duplication of research efforts; application of current and future technology which currently exists in one area to other areas (*i.e.,* submarine application which might translate to aircraft applications); the current state of operator and maintenance personnel training with regards to corrosion control and prevention; the current state of maintenance processes with regards to corrosion control and prevention; the incorporation of corrosion control and maintainability in current acquisition programs (during the design and manufacturing stages); the identity of unique environments important to National Security but with little commercial applications (*e.g.,* nuclear weapons). The Task Force will conduct an analysis of the findings generated and determine which areas, if adequate resources were applied, would provide the most significant advances in combat readiness. In addition, the Task Force will assess best commercial practices and determine their applicability to DOD 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 this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Due to scheduling conflicts, 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 meeting of this Task Force.

Dated: March 3, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–5461 Filed 3–10–04; 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 Contributions of Space Based Radar to Missile Defense will meet in closed session on March 19, 2004, at the Institute for Defense Analyses, 1801 N. Beauregard Street, Alexandria, VA. This Task Force will assess potential contributions of Space Based Radar (SBR) to missile defense.

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. This Task Force will: Assess the impact of adding a missile defense mission on the ability of SBR satellites to conduct their primary missions; assess how different SBR architectures and technical approaches might affect the ability of the satellites to achieve their primary missions and to contribute to missile defense; assess the value of potential SBR capabilities in the context of the family of sensors being developed by the Missile Defense Agency; and recommend any future actions that might be desirable related to SBR contributions to missile defense.

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, these meetings will be closed to the public.

Due to scheduling difficulties, 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 meeting of the Task Force.

Dated: March 5, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–5462 Filed 3–10–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On February 20, 2004, the Department of Education published a 30-day public comment period notice in the **Federal Register** (Page 7912, Column 1) for the information collection, ''Annual Progress Reporting Form for Assistive Technology (AT) Grantees''. The number of burden hours was incorrect and should read 2,464 hours to include an additional four hours for each of the 56 grantees to answer the modified/additional questions.

FOR FURTHER INFORMATION CONTACT: Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.*

Dated: March 5, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

[FR Doc. 04–5425 Filed 3–10–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

State Charter School Facilities Incentive Grants Program (CFDA Number: 84.282D)

AGENCY: Department of Education, Office of Innovation and Improvement.

ACTION: Notice; correction.

SUMMARY: We published a notice in the **Federal Register** on February 23, 2004 (69 FR 8318) inviting applications for new awards for fiscal year 2004 for the State Charter School Facilities Incentive Grants Program. We inadvertently omitted words from the text. This notice corrects that error.

Correction

In the **Federal Register** of February 23, 2004, in FR Doc. 04–3849, on page 8319, column 3, line 8, after the word ''competition'', insert the words ''for construction''.

FOR FURTHER INFORMATION CONTACT: Valarie Perkins or Jim Houser, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C140, Washington, DC 20202–6140. Telephone: (202) 260–1924 or by e-mail: *charter.facilities@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed in this section.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: March 5, 2004.

Nina Shokraii Rees,

Deputy Under Secretary for Innovation and Improvement.

[FR Doc. 04–5554 Filed 3–10–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–67–000]

Algonquin Gas Transmission Company; Notice of Application

March 5, 2004.

Take notice that on February 26, 2004, Algonquin Gas Transmission Company (Algonquin), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP04–67–000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for authorization to install, own, operate, and maintain certain facilities at its existing Burrillville Compressor Station in Providence County, Rhode Island and at certain existing meter and valve stations in Tolland, Hartford, and New London Counties, Connecticut, Barnstable and Bristol Counties, Massachusetts, and Newport County, Rhode Island, at an estimated cost of $11,514,000. Algonquin requests issuance of a final certificate by May 26, 2004. Algonquin states that the modifications to its system will create 60,000 Dth/d of additional capacity for the transportation of vaporized liquefied natural gas (LNG) volumes received from the LNG import terminal of Distrigas of Massachusetts, LLC in Everett, Massachusetts, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Steven E. Tillman, General Manager, Regulatory Affairs, Algonquin Gas Transmission Company, P.O. Box 1642, Houston, Texas 77251–1642, or phone (713) 627–5113, or fax (713) 627–5947

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date shown below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance

with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: March 19, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–538 Filed 03–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–332–008]

ANR Pipeline Company; Notice of Compliance Filing

March 4, 2004.

Take notice that on March 2, 2004, ANR Pipeline Company (ANR) tendered for filing as part of in FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of October 1, 2003:

Fifth Revised Sheet 108A
Second Revised Sheet 108B
Fourth Revised Sheet No. 108C
Fifth Revised Sheet No. 160
Fifth Revised Sheet No. 160A

ANR states that it is tendering the revised tariff sheets to incorporate changes that were inadvertently left out of ANR's 637 proceeding. In particular, ANR states that it is adding sheets to incorporate additional nomination opportunities as agreed to in ANR's 637 settlement.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–516 Filed 3–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–201–000]

ANR Pipeline Company; Notice Of Proposed Changes In Ferc Gas Tariff

March 4, 2004.

Take notice that on March 1, 2004, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective April 1, 2004:

Twentieth Revised Sheet No. 19
Tenth Revised Sheet No. 68H

ANR states that the above-referenced tariff sheets are being filed to comply with the annual re-determination of the levels of ''Transporter's Fuel Use (%)'', as required by ANR's currently effective tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–528 Filed 3–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–106]

ANR Pipeline Company; Notice of Negotiated Rate Filing

March 4, 2004.

Take notice that on March 1, 2004, ANR Pipeline Company (ANR) tendered for filing and approval, three negotiated rate service agreements between ANR and Noble Energy, Inc., the respective negotiated rate letter agreements, and a related Lease Dedication Agreement, along with related amendments to negotiated rate service agreements with Chevron U.S.A. Inc. and BHP Billiton Petroleum (Deepwater) Inc.

ANR requests that the Commission accept and approve the subject negotiated rate agreements and related amendments to be effective March 2, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–532 Filed 03–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–107]

ANR Pipeline Company; Notice of Negotiated Rate Filing

March 4, 2004.

Take notice that on March 1, 2004, ANR Pipeline Company (ANR) tendered for filing a negotiated rate service agreement with Madison Gas and Electric Company. ANR respectfully requests that the Commission accept this agreement effective November 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–533 Filed 3–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–105]

ANR Pipeline Company; Notice of Negotiated Rate Filing

March 5, 2004.

Take notice that on March 1, 2004, ANR Pipeline Company (ANR) tendered for filing an amendment to a service agreement between ANR and Wisconsin Public Service Corporation that reduces the MDQ under the agreement. ANR respectfully requests that the Commission accept this agreement effective April 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–537 Filed 03–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–194–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Filing

March 4, 2004.

Take notice that on March 1, 2004, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Thirty-First Revised Sheet No. 11A, with an effective date of April 1, 2004.

CIG states the tariff sheet is being filed to revise the Fuel Reimbursement Percentages applicable to Lost, Unaccounted-for and Other Fuel Gas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–523 Filed 3–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–195–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 4, 2004.

Take notice that on March 1, 2004, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of April 1, 2004:

Sixty-ninth Revised Sheet No. 25
Sixty-ninth Revised Sheet No. 26
Sixty-ninth Revised Sheet No. 27
Fifty-eighth Revised Sheet No. 28
Nineteenth Revised Sheet No. 31

Columbia states that these revised tariff sheets are filed pursuant to section 45, Electric Power Costs Adjustment (EPCA), of the General Terms and Conditions of Columbia's Tariff. Columbia states that section 45.1 allows Columbia to recover electric power costs, including carrying charges, incurred for compression of natural gas by means of various Transportation EPCA Rates and an LNG EPCA Rate, each of which shall be comprised of a Current EPCA Rate and an EPCA Surcharge.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–524 Filed 3–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–198–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 4, 2004.

Take notice that on March 1, 2004, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets with a proposed effective date of April 1, 2004:

Sixty-eighth Revised Sheet No. 25
Sixty-eighth Revised Sheet No. 26
Sixty-eighth Revised Sheet No. 27
Fifty-seventh Revised Sheet No. 28

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings.

See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–526 Filed 3–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP04–202–000 and RP03–222–001]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 5, 2004.

Take notice that on March 1, 2004, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fourteenth Revised Twelfth Revised Sheet No. 44 and Alternate Fourteenth Revised Sheet No. 44, with a proposed effective date of April 1, 2004.

Columbia states that it submits its annual filing pursuant to the provisions of section 35, ''Retainage Adjustment Mechanism (RAM)'', of the General Terms and Conditions (GTC) of its Tariff. Columbia notes that Fourteenth Revised Sheet No. 44 sets forth the retainage factors applicable to Columbia's transportation, storage and gathering services, as revised by this filing.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–544 Filed 3–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–196–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 4, 2004.

Take notice that on March 1, 2004, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of April 1, 2004:

Thirty-third Revised Sheet No. 18
Twenty-third Revised Sheet No. 18A
Thirty-fourth Revised Sheet No. 19

Columbia Gulf states that this filing represents Columbia Gulf's annual filing pursuant to the provisions of section 33, ''Transportation Retainage Adjustment (TRA),'' of the General Terms and Conditions (GTC) of its Tariff.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–525 Filed 3–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–197–000]

Dominion Cove Point LNG, LP; Notice Of Proposed Changes In Ferc Gas Tariff

March 5, 2004.

Take notice that on March 1, 2004, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with a proposed effective date of April 1, 2004:

Fourth Revised Sheet No. 10
Fourth Revised Sheet No. 205

Cove Point states that the purpose of this filing is to revise the applicable retainage percentages for service provided and clarify its tariff regarding the timing of future filings to revise retainage percentages.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance,

please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–542 Filed 3–10–04; 8:45 a.m.]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–206–000]

Dominion Transmission, Inc.; Notice of Proposed Changes In FERC Gas Tariff

March 4, 2004.

Take notice that on March 3, 2004, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of April 1, 2004:

First Revised Sheet No. 151
Second Revised Sheet No. 201

DTI states that the purpose of this filing is to clarify that DTI may agree to differing levels in a customer's Maximum Daily Transportation Quantity throughout the contract year for service under its Rate Schedules FT and FTNN provided it does so on a not unduly discriminatory basis.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–531 Filed 03–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–469–008, RP01–22–010, and RP03–177–005]

East Tennessee Natural Gas Company; Notice of Compliance Filing

March 4, 2004.

Take notice that on March 2, 2004, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets: (i) Second Sub Fifth Revised Sheet No. 52C and Second Sub Ninth Revised Sheet No. 176, each with an effective date of September 1, 2003, and (ii) Second Sub Eighth Revised Sheet No. 9, Second Sub Fourth Revised Sheet No. 129B, and Second Sub Fourth Revised Sheet No. 130, each with an effective date of November 3, 2003.

East Tennessee states that the purpose of this filing is to comply with the Commission's February 18, 2004 ''Order on Rehearing and Compliance Filings'' issued in East Tennessee's Order No. 637 proceeding in the captioned dockets.

East Tennessee states that copies of its filing have been served on all affected customers and interested State commissions, as well as to all parties on the official service lists compiled by the Secretary of the Commission in these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–517 Filed 3–10–04; 8:45 a.m.]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–11–003]

Enbridge Pipelines (Louisiana Intrastate) LLC, Notice of Compliance Filing

March 4, 2004.

Take notice that on February 12, 2004, Enbridge Pipelines (Louisiana Intrastate) LLC filed its annual revision of the fuel percentage on its system pursuant to Section 3.2 of its Statement of Operating Conditions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: March 12, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–513 Filed 3–10–04;8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–199–001]

Enbridge Pipelines (AlaTenn) LLC; Notice of Compliance Filing

March 4, 2004.

Take notice that on August 6, 2003, Enbridge Pipelines (AlaTenn) LLC (AlaTenn) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 2003:

First Revised Sheet No. 28A
Substitute First Revised Sheet No. 113
Second Revised Sheet No. 118

AlaTenn states that the purpose of the filing is to comply with the Commission's Order issued on July 23, 2003, in the above referenced docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eLibrary (e-Filing) link.

Protest Date: March 11, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–518 Filed 3–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–203–000]

Equitrans, L.P.; Notice of Tariff Filing

March 4, 2004.

Take notice that on March 1, 2004, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, revised tariff sheets listed in Appendix A to the filing, proposed to become effective on April 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–529 Filed 03–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–68–000 and CP04–69–000]

Freeport-McMoRan Energy LLC; Notice of Application

March 4, 2004.

Take notice that on February 27, 2004, Freeport-McMoRan Energy LLC (FME), 1615 Poydras Street, New Orleans, Louisiana, 70112, filed in Docket Nos. CP04–68–000 and CP04–69–000 an application, pursuant to section 7(c) of the Natural Gas Act and Part 157, subpart A of the Commission's regulations, for: (1) A certificate of public convenience and necessity to construct, own, and operate a single-use natural gas pipeline facility, the Coden Onshore Pipeline, to transport natural gas from the offshore Main Pass Energy Hub™ (MPEH™) deepwater liquefied natural gas (LNG) port to interconnections with interstate natural gas pipelines near Coden, Mobile County, Alabama; and (2) a blanket certificate of public convenience and necessity in Docket No. CP04–69–000 under Subpart F of Part 157. The application is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (866) 208–3767 or TYY, (202) 502–8659.

FME proposes to construct, own, and operate the Coden Onshore Pipeline, a 5.1-mile, 36-inch, single-use pipeline with a capacity of 1.5 billion cubic feet per day (Bcf/D). FME states that the sole purpose of these pipeline facilities would be to transport natural gas owned by FME from FME's proposed MPEH™ offshore deepwater port for the importation and vaporization of LNG, and processing, storage and transportation of natural gas and natural gas liquids, which would be located off the Louisiana coast. FME states that it will operate the MPEH™ as a proprietary deepwater LNG port pursuant to the Deepwater Port Act of 1974. FME also states that it filed an application to construct and operate the offshore portions of the MPEH™ project with the U.S. Coast Guard on February 27, 2004.

FME asserts that, inasmuch as it plans to use the proposed Coden Onshore Pipeline solely to deliver natural gas owned by FME on a proprietary basis,

it requests waiver of the open access requirements of part 284 of the Commission's regulations, including, but not limited to, cost, accounting, and reporting requirements.

Any questions regarding this application should be directed to David Landry, Vice President—General Manager, Main Pass Energy Hub™, Freeport-McMoRan Energy LLC, 1615 Poydras Street, New Orleans, Louisiana 70112, phone (504) 582–4880, or, in the alternative, David Hunter, Jones Walker LLP, 201 St. Charles Avenue, New Orleans, Louisiana 70170, phone (504) 582–8366.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before March 25, 2004, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: March 25, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–534 Filed 3–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–056]

Gas Transmission Northwest Corporation; Notice of Negotiated Rates

March 4, 2004.

Take notice that on February 27, 2004, Gas Transmission Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Third Revised Volume No. 1–A, Sixth Revised Sheet No. 15.

GTN states that this sheet is being filed to reflect the continuation of a negotiated rate agreement pursuant to evergreen provisions contained in the agreement. GTN requests that the Commission accept the proposed tariff sheet to become effective March 1, 2004.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–509 Filed 3–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–136–002]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

March 5, 2004.

Take notice that on February 19, 2004, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing the Prepared Supplemental Direct Testimony of Kenneth B. Johnston and the Prepared Supplemental Direct Testimony of Scott E. Rupff, which Iroquois states is filed in compliance

with Ordering Paragraph (B) of the Commission's Order issued in the above-referenced docket on January 30, 2004.

Iroquois states that Mr. Johnston's supplemental testimony addresses each of the provisions of 18 CFR 154.202 as they relate to Iroquois' rate proposal, and particularly the rates for secondary access to the Eastchester expansion.

Iroquois states that Mr. Rupff's supplemental testimony addresses issues related to priority of service, applicable tariff provisions for Eastchester secondary access service, and the revenue impacts of such service.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: March 12, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–541 Filed 3–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–204–000]

Northern Border Pipeline Company; Notice of Tariff Filing

March 4, 2004.

Take notice that on March 2, 2004, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective April 1, 2004:

Second Revised Sheet No. 184
Third Revised Sheet No. 185
Original Sheet No. 185A
First Revised Sheet No. 186
First Revised Sheet No. 187
Third Revised Sheet No. 467

Northern Border is filing revised tariff sheets for the purpose of adding a Buyer Authorized Automatic Term Park/Lending (ATPL) service option under Rate Schedule PAL.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers and interested State regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–530 Filed 03–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–205–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 5, 2004.

Take notice that on March 2, 2004, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective April 1, 2004:

Seventh Revised Sheet No. 1
Sixth Revised Sheet No. 212
Third Revised Sheet No. 98
Original Sheet No. 193
Tenth Revised Sheet No. 213
Original Sheet No. 194
Original Sheet No. 195
Fourth Revised Sheet No. 218
Original Sheet No. 196
Original Sheet No. 197
Original Sheet No. 469
Original Sheet No. 198
Third Revised Sheet No. 204
Original Sheet No. 470
Original Sheet No. 204A
Original Sheet No. 471
Original Sheet No. 472
Original Sheet No. 473
Sheet Nos. 474–499

Northern Border states that it is filing revised tariff sheets for the purpose of establishing a new Rate Schedule, referred to as Rate Schedule TPB. Northern Border also states that this rate schedule is designed to provide a Third Party Balancing Service to fulfill a need on Northern Border's system to assist customers in accessing balancing services to meet variable load requirements.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers and interested State regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This

filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–545 Filed 3–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–152–003]

Northern Natural Gas Company; Notice of Compliance Filing

March 4, 2004.

Take notice that on January 7, 2004, Northern Natural Gas Company (Northern), tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet:

Seventh Revised Sheet No. 303

Northern states that the revised tariff sheet is being filed to comply with the Commission's December 18, 2003, Order on Remand in this docket approving Northern's filing to include indexed-based rates that are capped by Northern's maximum tariff rates, as a permissible type of discounted rate.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: March 12, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–515 Filed 3–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–12–002]

Overland Trail Transmission, LLC , Notice of Compliance Filing

March 4, 2004.

Take notice that on December 15, 2003, Overland Trail Transmission, LLC (OTTCO) filed a revised Statement of Operating Conditions to comply with the Commission's November 14, 2003 Letter Order approving OTTCO's Settlement Agreement which was filed on October 17, 2003.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: March 12, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–514 Filed 3–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–192–000]

Panhandle Eastern Pipe Line Company, LLC; Notice of Tariff Filing

March 4, 2004.

Take notice that on March 1, 2004, Panhandle Eastern Pipe Line Company, LLC (Panhandle) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing to become effective April 1, 2004.

Panhandle states that this filing is made in accordance with section 24 (Fuel Reimbursement Adjustment) of the General Terms and Conditions in Panhandle's FERC Gas Tariff, Second Revised Volume No. 1.

Panhandle further states that copies of this filing are being served on all affected customers and applicable State regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings.

See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–521 Filed 3–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–190–000]

Southwest Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

March 4, 2004.

Take notice that on March 1, 2004, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Tenth Revised Sheet No. 5, proposed to become effective April 1, 2004.

Southwest states that this filing is made in accordance with section 16 (Fuel Reimbursement Adjustment) of the General Terms and Conditions in Southwest's FERC Gas Tariff, First Revised Volume No. 1.

Southwest further states copies of this filing are being served on all affected customers and applicable State regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–519 Filed 3–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–191–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

March 4, 2004.

Take notice that on March 1, 2004, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A attached to the filing. The proposed effective date of the revised sheets is April 1, 2004.

Transco states that the purpose of the instant filing is to recalculate its fuel retention percentages applicable to transportation and storage rate schedules pursuant to section 38 of the General Terms and Conditions of Transco's FERC Gas Tariff. Transco states that Appendix B attached to the filing contains workpapers supporting the derivation of the revised fuel retention percentages.

Transco states that copies of the filing are being mailed to affected customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–520 Filed 3–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–200–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 5, 2004.

Take notice that on March 1, 2004, transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A attached to the filing, to become effective April 1, 2004.

Transco states that the instant filing is submitted pursuant to section 41 of the General Terms and Conditions of Transco's FERC Gas Tariff which provides that Transco will file to reflect net changes in the Transmission Electric Power (TEP) rates at least 30 days prior to each TEP Annual Period beginning April 1. Transco states that Attached in Appendix B to the filing are workpapers supporting the derivation of the revised TEP rates reflected on the tariff sheets included therein.

Transco states that it is serving copies of the instant filing to its affected customers, interested state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://*

www.ferc.gov using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–543 Filed 3–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–193–000]

Trunkline Gas Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

March 4, 2004.

Take notice that on March 1, 2004, Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A attached to the filing, to become effective April 1, 2004. Trunkline states that this filing is being made in accordance with section 22 (Fuel Reimbursement Adjustment) of Trunkline's FERC Gas Tariff, Third Revised Volume No. 1.

Trunkline states that copies of this filing are being served on all affected shippers and interested State regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–522 Filed 3–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–199–000]

Williston Basin Interstate Pipeline Company; Notice of Fuel and Electric Power Reimbursement Filing

March 4, 2004.

Take notice that on March 1, 2004, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the following revised tariff sheets to become effective April 1, 2004.

Second Revised Volume No. 1

Fifty-fourth Revised Sheet No. 15
Thirtieth Revised Sheet No. 15A
Fifty-fourth Revised Sheet No. 16
Thirtieth Revised Sheet No. 16A
Fifty-second Revised Sheet No. 18
Thirtieth Revised Sheet No. 18A
Thirtieth Revised Sheet No. 19
Thirtieth Revised Sheet No. 20

Original Volume No. 2

Ninety-eighth Revised Sheet No. 11B

Williston Basin states that the revised tariff sheets reflect revisions to the Company's fuel reimbursement percentages for gathering, storage and transportation services, and to the Company's electric power reimbursement rates for storage and transportation services, pursuant to Williston Basin's Fuel and Electric Power Reimbursement Adjustment Provision contained in section 38 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–527 Filed 3–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–70–000, et al.]

Black River Power, LLC, et al.; Electric Rate and Corporate Filings

March 4, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Black River Power, LLC, Black River Generation, LLC, Energy Investors Funds Group, LLC

[Docket No. EC04–70–000]

Take notice that on March 2, 2004, Black River Power, LLC (Black River), Black River Generation, LLC and Energy Investors Funds Group, LLC filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act, 16 U.S.C. 824b, and part 33 of the Commission's regulations, 18 CFR part 33, for authorization of a disposition of certain jurisdictional facilities held by Black River to EIF Hamakua LLC.

Black River states that a copy of the application was served upon the Public Service Commission of New York.

Comment Date: March 23, 2004.

2. Lima Energy Company

[Docket No. EG04–37–000]

Take notice that on March 3, 2004, Lima Energy Company (LEC) filed an Application for Determination of Exempt Wholesale Generator Status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935, all as more fully explained in the Application.

Comment Date: March 24, 2004.

3. Pepco Energy Services, Inc., Potomac Power Resources, LLC

[Docket Nos. ER98–3096–008 and ER01–202–001]

Take notice that on March 1, 2004, Pepco Energy Services, Inc. and Potomac Power Resources, LLC submitted for filing a triennial market power update pursuant to the Commission orders issued granting them market-based rate authorizations issued July 16, 1998 in Docket No. ER98–3096–000 and December 13, 2000 in Docket No. ER01–202–000.

Comment Date: March 22, 2004.

4. North Central Missouri Electric Cooperative, Inc.

[Docket No. ER02–2001–000]

Take notice that on February 17, 2004, North Central Missouri Electric Cooperative, Inc. filed a Request for Waiver of Order No. 2001 Electric Quarterly Report Requirements.

Comment Date: March 24, 2004.

5. PJM Interconnection, L.L.C.

[Docket No. ER03–406–005]

Take notice that on March 1, 2004, PJM Interconnection, L.L.C. (PJM) submitted for filing a revision to its February 27, 2004 compliance filing in Docket No. ER03–406–004.

PJM states that it has served a copy of this filing upon all PJM members, the utility regulatory commissions in the PJM region, and all persons on the Commission's service list in this proceeding.

Comment Date: March 22, 2004.

6. Devon Power LLC, et al.

[Docket No. ER03–563–030]

Take notice that on March 1, 2004, ISO New England Inc. (ISO), submitted a compliance filing reflecting a comprehensive locational capacity proposal for New England pursuant to the Commission's Order issued April 25, 2003, 103 FERC ¶61,082 at P 37.

ISO states that copies of the compliance filing have been served on all parties to the above-captioned proceeding, as well as the Governors and utility regulators of New England, and the New England transmission customers that are not Participants in the New England Power Pool. In addition, ISO states that each of the NEPOOL Participants Committee Members is being served with an electronic copy of the compliance filing.

Comment Date: March 22, 2004.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–1312–003]

Take notice that on March 1, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing Schedule 20 (Treatment of Station Power) of its Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1, in compliance with the Commission's Order, Midwest Independent Transmission System Operator, Inc., 106 FERC ¶ 61,073 (2004).

Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. In addition, Midwest states that the filing has been posted on the Midwest ISO's website and will provide hard copies upon request.

Comment Date: March 19, 2004.

8. Pacific Gas and Electric Company

[Docket No. ER04–337–003]

Take notice that on March 1, 2004, Pacific Gas and Electric Company (PG&E) made an additional filing related to its Annual Balancing Account Update Filing, in Docket No. ER04–337–000.

PG&E states that copies of this filing have been served upon the California Independent System Operator Corporation (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: March 22, 2004.

9. New England Power Pool

[Docket No. ER04–601–000]

Take notice that on March 1, 2004, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to (1) permit NEPOOL to expand its membership to include Linde Gas LLC (Linde Gas) and Ridgewood Maine Hydro Partners, L.P. (Ridgewood Maine); and (2) to terminate the memberships of Indeck-Pepperell Power Associates, Inc. (Indeck-Pepperell) and RWE Trading Americas, Inc. (RWE Trading). The Participants Committee requests the following effective dates: February 1, 2004 for the termination of Indeck-Pepperell and RWE Trading; March 1, 2004 for the commencement of participation in NEPOOL by Ridgewood Maine; and May 1, 2004 for commencement of participation in NEPOOL by Linde Gas.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: March 22, 2004.

10. PPL Electric Utilities Corporation

[Docket No. ER04–602–000]

Take notice that on March 1, 2004, PPL Electric Utilities Corporation (PPL Electric) filed a notice of termination of 30 Power Supply Agreements between it and various Pennsylvania Boroughs. PPL Electric states that the Power Supply Agreements terminated by their own terms on February 1, 2004.

PPL Electric states that it has served a copy of the notice of termination of on each of the customers named in the agreements.

Comment Date: March 22, 2004.

11. American Electric Power Service Corporation

[Docket No. ER04–603–000]

Take notice that on March 1, 2004, American Electric Power Service Corporation, (AEP) as agent for the Operating Companies of the American Electric Power System (collectively AEP) tendered for filing with the Commission an Agreement on Operating and Business Practices to Implement Generation Transfer Pathway between AEP and PJM Interconnection, LLC (PJM). AEP requests an effective date when PJM notifies AEP, at least 30 days prior to the date that the integration of Commonwealth Edison Company (ComEd) into PJM's economic dispatch will commence.

AEP states that a copy of the filing was served upon AEP's transmission service customers, PJM, ComEd and the state regulatory commissions exercising jurisdiction over affected AEP Companies.

Comment Date: March 22, 2004.

12. Portland General Electric Company

[Docket No. ER04–604–000]

Take notice that on March 1, 2004, Portland General Electric Company

(PGE) tendered for filing revised tariff sheets to PGE's FERC Electric Tariff, Original Volume No. 12. PGE states that the revisions are intended to bring PGE's Form of Umbrella Service Agreement into conformance with current business practices.

PGE states that a copy of the filing was served upon the Oregon Public Utility Commission.

Comment Date: March 22, 2004.

13. Ameren Services Company

[Docket No. ER04–605–000]

Take notice that on March 1, 2004, Ameren Services Company (ASC) tendered for filing an executed Network Integration Transmission Service and Network Operating Agreement between ASC and Clay Electric Cooperative, Inc. ASC states that the purpose of the Agreements is to permit ASC to provide transmission service to Clay Electric Cooperative, Inc., pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: March 22, 2004.

14. Wisconsin Electric Power Company

[Docket No. ER04–607–000]

Take notice that on March 1, 2004, Wisconsin Electric Power Company (Wisconsin Electric), on behalf of the Wisconsin Energy Corporation Operating Companies (WEC Operating Companies), tendered for filing revisions to the WEC Operating Companies Joint Ancillary Services Tariff, FERC Electric Tariff, Original Volume No. 2, wherein the WEC Operating Companies propose to implement a Generator Imbalance Service and make conforming changes to its Joint Ancillary Services Tariff. WEC Operating Companies request an effective date of April 1, 2004.

Comment Date: March 22, 2004.

15. PJM Interconnection, L.L.C.

[Docket No. ER04–608–000]

Take notice that on March 1, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing revisions to the PJM Open Access Transmission Tariff, the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., the Reliability Assurance Agreement Among Load Serving Entities In The MAAC Control Zone, and the PJM West Reliability Assurance Agreement Among Load Serving Entities In The PJM West Region to implement market rules for behind the meter generation. PJM requests an effective date of June 1, 2004 for the amendments.

PJM states that copies of this filing have been served on all PJM members, and each state electric utility regulatory commission in the PJM region.

Comment Date: March 22, 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. E4–535 Filed 03–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–343–004, et al.]

ITC Holdings Corp., et al.; Electric Rate and Corporate Filings

March 3, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. ITC Holdings Corp., et al.; The Detroit Edison Company

[Docket Nos. ER03–343–004; ER03–576–002]

Take notice that on February 27, 2004, The Detroit Edison Company (Detroit Edison) tendered for filing with the Commission a letter agreement and accompanying schedule (collectively, the Letter Agreement) between Detroit Edison and International Transmission Company (ITC) which seeks to extend on a limited basis the Service Level Agreement (C&M Service Agreement)—Construction and Maintenance/Engineering/System Operations, dated February 28, 2003. Detroit Edison states that it has entered into the Letter Agreement in order to ensure that ITC will continue to have the necessary staff and resources to reliably operate its jurisdictional transmission facilities located in southeastern Michigan until such time that it completes its transition to full operational independence.

Comment Date: March 19, 2004.

2. PJM Interconnection, L.L.C.

[Docket No. ER03–406–004]

Take notice that on February 27, 2003, PJM Interconnection, L.L.C. (PJM) submitted revisions to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. to address credit requirements for conversion of auction revenue rights to financial transmission rights (FTRs), and the initial allocation of FTRs in new zones. PJM states that it proposes an effective date of February 28, 2004 for the proposed revisions.

PJM states that copies of the filing were served on all PJM members, the utility regulatory commissions in the PJM region, and all persons on the Commission's service list for this proceeding.

Comment Date: March 19, 2004.

3. American Home Energy Corporation

[Docket No. ER04–590–000]

Take notice that on February 27, 2004 American Home Energy Corporation, tendered for filing a Notice of Cancellation of their market-based rate authority in Docket No. ER98–1903–000 to be effective immediately.

Comment Date: March 19, 2004.

4. Southern Company Services, Inc.

[Docket No. ER04–591–000]

Take notice that on February 27, 2004, Southern Company Services, Inc. (SCS), on behalf of Alabama Power Company, Georgia Power Company, Mississippi Power Company, Gulf Power Company and Savannah Electric and Power Company, tendered for filing amendments to unit power sales agreements with Florida Power and Light Company, Florida Power Corporation and Jacksonville Electric Authority.

Comment Date: March 19, 2004.

5. Ocean State Power II

[Docket No. ER04–592–000]

Take notice that on February 27, 2004, Ocean State Power II (Ocean State II) tendered for filing revised pages to Rate Schedule FERC Nos. 5–8, which update Ocean State II's rate of return on equity with respect to such rate schedules. Ocean State II requests an effective date for the rate schedule changes of April 27, 2004.

Ocean State II states that copies of the Supplements have been served upon, Ocean State II's power purchasers, the Commonwealth of Massachusetts Department of Telecommunications and Energy, and the Rhode Island Public Utilities Commission.

Comment Date: March 19, 2004.

6. Ocean State Power

[Docket No. ER04–593–000]

Take notice that on February 27, 2004, Ocean State Power (Ocean State) tendered for filing revised pages to Rate Schedule FERC Nos. 1–4, which update Ocean State's rate of return on equity with respect to such rate schedules. Ocean State requests an effective date for the rate schedule changes of April 27, 2004.

Ocean state states that copies of the Supplements have been served upon, Ocean State's power purchasers, the Commonwealth of Massachusetts Department of Telecommunications and Energy, and the Rhode Island Public Utilities Commission.

Comment Date: March 19, 2004.

7. Commonwealth Edison Company

[Docket No. ER04–594–000]

Take notice that on February 27, 2004, Commonwealth Edison Company (ComEd) submitted for filing five unexecuted Service Agreements entered into between ComEd and Edison Mission Marketing & Trading Inc. (EMMT) under ComEd's Open Access Transmission Tariff. ComEd requests an effective date of April 1, 2004 for all of the Service Agreements.

ComEd states that copies of the filing were served upon EMMT and the Illinois Commerce Commission.

Comment Date: March 19, 2004.

8. Commonwealth Edison Company

[Docket No. ER04–595–000]

Take notice that on February 27, 2004 Commonwealth Edison Company (ComEd) submitted for filing an unexecuted Amended Interconnection Agreement (IA) between ComEd and Cordova Energy Company LLC (Cordova) designated as FERC Electric Tariff, Second Revised Volume No. 5, Original Service Agreement No. 764. In addition, ComEd submitted for filing a Notice of Cancellation of FERC Rate Schedule No. 54.

Comment Date: March 19, 2004.

9. Commonwealth Edison Company

[Docket No. ER04–96–000]

Take notice that on February 27, 2004 Commonwealth Edison Company (ComEd) submitted for filing an unexecuted Amended Interconnection Agreement (IA) between ComEd and Allegheny Energy Supply Lincoln Generating Facility, LLC (previously Des Plaines Green Land Development, LLC) (Allegheny) designated as FERC Electric Tariff, Second Revised Volume No. 5, Original Service Agreement No. 765. In addition, ComEd submitted for filing a notice of cancellation of FERC Rate Schedule No. 55.

Comment Date: March 19, 2004.

10. Commonwealth Edison Company

[Docket No. ER04–597–000]

Take notice that on February 27, 2004, Commonwealth Edison Company (ComEd) submitted for filing an unexecuted Amended Interconnection Agreement between ComEd and LSP-Kendall Energy, LLC (LSP-Kendall) designated as FERC Electric Tariff, Second Revised Volume No. 5, Original Service Agreement No. 762. In addition, ComEd submitted for filing a notice of cancellation of FERC Rate Schedule No. 52.

Comment Date: March 19, 2004.

11. PJM Interconnection, L.L.C.

[Docket No. ER04–598–000]

Take notice that on February 27, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing revisions to Schedule 6A (Black Start Service) of the PJM Open Access Transmission Tariff to permit more flexibility in the recovery of fixed costs associated with providing black start service. PJM requests an effective date of April 28, 2004 for the amendment.

PJM states that copies of this filing have been served on all PJM members, and each state electric utility regulatory commission in the PJM region.

Comment Date: March 19, 2004.

12. Commonwealth Edison Company

[Docket No. ER04–599–000]

Take notice that on February 27, 2004, Commonwealth Edison Company (ComEd) submitted for filing an executed Amended Interconnection Agreement (IA) between ComEd and Elwood Energy LLC (Elwood) designated as FERC Electric Tariff, Second Revised Volume No. 5, Original Service Agreement No. 763. In addition, ComEd submitted for filing a notice of cancellation of FERC Rate Schedule No. 47.

Comment Date: March 19, 2004.

13. Carolina Power & Light Company

[Docket No. ER04–600–000]

Take notice that on February 27, 2004, Progress Energy, Inc. (Progress Energy) on behalf of its subsidiary Carolina Power & Light Company (CP&L) d/b/a Progress Energy Carolinas, Inc., tendered for filing a Service Agreement for Network Integration Transmission Service and a Network Operating Agreement with French Broad Electric Membership Corporation. CP&L is requesting an effective date of February 1, 2004.

Progress Energy states that a copy of the filing was served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment Date: March 19, 2004.

14. Commonwealth Edison Company

[Docket No. ER04–606–000]

Take notice that on February 27, 2004, Commonwealth Edison Company (ComEd) tendered for filing with the Federal Energy Regulatory Commission (Commission) amendments to Interconnection Agreements entered into between ComEd and Midwest Generation, LLC (MWGen) designated as FERC Electric Tariff, Second Revised Volume No. 5, Original Service Agreements 749 through 761. In addition, ComEd submitted for filing a Notice of Cancellation of FERC Rate Schedule Nos. 49, 50 and 51. ComEd requests an April 27, 2004 effective date for the Service Agreements and cancellation of the Rate Schedules.

ComEd states that copies of the filing were served on MWGen and the Illinois Commerce Commission.

Comment Date: March 19, 2004.

15. Douglas R. Oberhelman

[Docket No. ID–3998–000]

Take notice that on February 17, 2004, Douglas R. Oberhelman (Applicant) filed, pursuant to the provisions of Section 305(b) of the Federal Power Act 16 U.S.C. 825d(b), and Part 45 of the Regulations of the Federal Energy Regulatory Commission, under, 18 CFR part 45, for authorization to hold interlocking positions.

Comment Date: March 17, 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. E4–536 Filed 3–10–04; 8:45 a.m.]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–13–000]

Saltville Gas Storage Company, L.L.C.; Notice of Availability of the Environmental Assessment for the Proposed Saltville Storage Project

March 5, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Saltville Gas Storage Company, L.L.C. (Saltville) in the above-referenced docket. The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Saltville is currently developing a new 8.2 billion cubic foot, underground natural gas storage facility using existing salt caverns that were previously authorized for construction and operation by the Virginia State Corporation Commission in Smyth and Washington Counties, Virginia. Saltville has received all necessary state regulatory approvals to construct and operate the storage facility. *See* Appendix 1 for a list of the facilities and their construction status. The EA focuses its analysis on the facilities that still need to be constructed, on restoration of the areas previously disturbed or currently being disturbed by on-going construction activities, and on the operation of the existing facilities.

The purpose of the proposed storage field would be to provide about 8.2 billion cubic feet of working gas capacity with an estimated maximum withdrawal rate of 550,000 thousand cubic feet per day (Mcfd) of gas and an estimated maximum injection rate of 220,000 Mcfd. The storage field is interconnected with the transmission systems of Virginia Gas Pipeline Company, an intrastate company, and East Tennessee Natural Gas Company, an interstate company.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to Federal, State and local agencies, and stakeholders that responded to our December 15, 2003, Notice of Intent to prepare an Environmental Assessment for the Proposed Saltville Storage Project and Request for Comments on Environmental Issues, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Branch 2, PJ11.2.
- Reference Docket No. CP04–13–000; and
- Mail your comments so that they will be received in Washington, DC on or before April 5, 2004.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Sign-up.''

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (1–866–208–3372) or on the FERC Internet Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659 or at *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

you with notification of these filings, document summaries and direct links to the documents. Go to *www.ferc.gov*, click on ''eSubscription'' and then click on ''Sign-up.''

Magalie R. Salas,

Secretary.

[FR Doc. E4–546 Filed 3–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

March 4, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of intention.

b. *Docket No.:* DI04–4–000.

c. *Date Filed:* February 2, 2004, amended March 2, 2004.

d. *Applicant:* Upland Wings, Inc., Wings Lake, One Wings Lake Drive, Sullivan, MO 63080, telephone (573) 860–3146.

e. *Name of Project:* Wings Lake Power Station Project.

f. *Location:* The Wings Lake Power Station Project would be located in Sections 3, 4, 5, 8, 9 of T. 39 N., R. 1 W., 5th Meridian at the former Pea Ridge Iron Ore Company mining site in Washington County, Missouri. The project will not occupy tribal or Federal land.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* James C. Kennedy, President, Upland Wings, One Wings Lake Drive, Sullivan, MO 63080, telephone (573) 860–4986, E-mail *wings@fidnet.com*.

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton (202) 502–8768, or E-mail address: *henry.ecton@ferc.gov*.

j. *Deadline for Filing Comments and/or Motions:* April 5, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov*. Please include the docket number (DI04–4–000) on any comments or motions filed.

k. *Description of Project:* The proposed Wings Lake Power Station Project, a pump storage project, would consist of: (1) An upper and lower reservoir on a former iron ore mine site, with the upper reservoir filled from ground water pumped from the mine; (2) a 700-foot-long, 100-foot-high rock and compacted concrete dam; (3) a turbine/generating unit, with a total rated capacity of 500 MW, located in a mine shaft; and (4) appurtenant facilities. The hydroelectric unit will be tied into the interstate grid through the Crawford Electric Cooperative, Bourbon, MO.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link, select ''Docket#'' and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–510 Filed 3–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Site Visit, and Soliciting Scoping Comments

March 4, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New major license.

b. *Project No.:* 2107–016.

c. *Date Filed:* December 16, 2003.

d. *Applicant:* Pacific Gas and Electric Company (PG&E).

e. *Name of Project:* Poe Project.

f. *Location:* On the North Fork Feather River in Butte County, near Pulga, California. The project includes 144 acres of lands of the Plumas National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Tom Jereb, Project Manager, Hydro Generation Department, Pacific Gas and Electric Company, P.O. Box 770000 (N11C), San Francisco, CA 94177, (415) 973–9320.

i. *FERC Contact:* John Mudre, (202) 502–8902 or *john.mudre@ferc.gov*.

j. *Deadline for Filing Scoping Comments:* May 3, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application is not ready for environmental analysis at this time.

l. The Poe Project consists of: (1) The 400-foot-long, 60-foot-tall Poe Diversion Dam, including four 50-foot-wide by 41-foot-high radial flood gates, a 20-foot-wide by 7-foot-high small radial gate, and a small skimmer gate that is no longer used; (2) the 53-acre Poe Reservoir; (3) a concrete intake structure located on the shore of Poe Reservoir; (4) a pressure tunnel about 19 feet in diameter with a total length of about 33,000 feet; (5) a differential surge chamber located near the downstream end of the tunnel; (6) a steel underground penstock about 1,000 feet in length and about 14 feet in diameter; (7) a reinforced concrete powerhouse, 175-feet-long by 114-feet-wide, with two vertical-shaft Francis-type turbines rated at 76,000 horsepower connected to vertical-shaft synchronous generators rated at 79,350 kVA with a total installed capacity of 143 MW and an average annual generation of 584 gigawatt hours; (8) the 370-foot-long, 61-foot-tall, concrete gravity Big Bend Dam; (9) the 42-acre Poe Afterbay Reservoir; and (10) related facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Scoping Process:* The Commission intends to prepare an Environmental Assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings: FERC staff will conduct one agency scoping meeting and one public meeting. The agency scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns, while the public scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Public Scoping Meeting

Date: Wednesday March 31, 2004.
Time: 7:30 p.m.
Place: U.S. Forest Service District Office.
Address: 875 Mitchell Avenue, Oroville, CA.

Agency Scoping Meeting

Date: Thursday April 1, 2004.
Time: 10 a.m.
Place: U.S. Forest Service District Office.
Address: 875 Mitchell Avenue, Oroville, CA.

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EA are being distributed to the parties on the Commission's mailing list under separate cover. Copies of the SD1 will be available at the scoping meeting or may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link (*see* item m above).

Site Visit

The Applicant and FERC staff will conduct a project site visit beginning at 9:30 a.m. on Wednesday, March 31, 2004. All interested individuals, organizations, and agencies are invited to attend. All participants should meet at the parking area at the Poe Dam on Route 70, approximately 25 miles northeast of Oroville. All participants are responsible for their own transportation to the site. Please note that, at present, the county road to the powerhouse is closed due to a slide, and access is possible only down a steep four-wheel-drive trail. Improvements may be made prior to the site visit. Also note that access to the Big Bend dam requires a 45 minute hike of moderate-to-strenuous exertion. Anyone with questions about the site visit or powerhouse access should contact Mr. Tom Jereb of PG&E at 415–973–9320.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Magalie R. Salas,

Secretary.

[FR Doc. E4–511 Filed 3–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 459–128]

Union Electric Company (d/b/a/ AmerenUE); Notice of Application and Applicant Prepared Environmental Assessment Tendered for Filing With the Commission, Establishing Procedural Schedule for Relicensing and Deadline for Submission of Final Amendments

March 4, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* 459–128.

c. *Date Filed:* February 24, 2004.

d. *Applicant:* Union Electric Company (d/b/a/ AmerenUE).

e. *Name of Project:* Osage Hydroelectric Project.

f. *Location:* On the Osage River, in Benton, Camden, Miller and Morgan Counties, central Missouri. The project occupies 1.6 acres of Federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. ((791 (a)–825(r).

h. *Applicant Contact:* Jerry Hogg, Superintendent Hydro Regulatory Compliance, AmerenUE, 617 River Road, Eldon, MO 65026; Telephone (573) 365–9315; e-mail *jhogg@ameren.com*.

i. *FERC Contact:* Allan Creamer at (202) 502–8365; or e-mail at *allan.creamer@ferc.gov*.

j. *Deadline for filing comments on the application:* 60 days from the filing date shown in paragraph (c), or April 26, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. After logging into the e-Filing system, select ''Comment on Filing'' from the Filing Type Selection screen and continue with the filing process. The Commission strongly encourages electronic filing.

The Commission's rules of practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Cooperating Agencies:* We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instruction for filing comments described in item j above.

l. *Status:* This application has not been accepted for filing. We are not soliciting motions to intervene, protests, or final terms and conditions at this time.

m. *The Project Description:* The existing project consists of: (1) A 2,543-foot-long, 148-foot-high dam comprised of, from right to left: (i) A 1,181-foot-long, non-overflow section, (ii) a 520-foot-long gated spillway section, (iii) a 511-foot-long intake works and powerhouse section, and (iv) a 331-foot-long non-overflow section; (2) an impoundment (Lake of the Ozarks), approximately 93 miles in length, covering 54,000 acres at a normal full pool elevation of 660 feet mean sea level; (3) a powerhouse, integral with the dam, containing eight main generating units (172 MW) and two auxiliary units (2.1 MW each), having a total installed capacity of 176.2 MW; and (4) appurtenant facilities. The project generates an average of 636,397 megawatt-hours of electricity annually.

AmerenUE currently operates, and is proposing to continue to operate, the Osage Project as a peaking and load regulation facility. AmerenUE proposes to upgrade two of the facility's eight main generating units and the two smaller, auxiliary generating units. With the proposed upgraded units, energy generation is estimated to increase by about 5.6 percent. In addition to the physical plant upgrades, AmerenUE proposes a variety of environmental and recreation measures.

n. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field (P–459), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Procedural Schedule and Final Amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone: Issue acceptance or deficiency letter. Target Date: May 2004.

Milestone: Request additional information (if necessary). Target Date: May 2004.

Notice soliciting final terms and conditions. Target Date: July 2004.

Notice of availability of the EA. Target Date: December 2004.

Ready for Commission Decision on the Application. Target Date: August 2005.

At this time, we intend to prepare a single environmental document. The EA will include our recommendations for operational measures and environmental enhancement measures that should be part of any license issued by the Commission. Recipients will have 45 days to provide the Commission with any written comments on the EA. All comments filed with the Commission will be considered in the order taking final action on the license application. Should substantive comments, requiring additional analysis, be received, a revised NEPA document will be prepared.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice soliciting final terms and conditions.

Magalie R. Salas,

Secretary.

[FR Doc. E4–512 Filed 3–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–2595–000, EL03–34–000, ER03–1277–000, ER03–2458–000, ER04–106–000, ER04–446–000, ER04–454–000 (Not Consolidated), EL04–43–000, EL04–46–000, ER04–364–000, ER04–375–000, ER04–456–000, ER04–571–000]

Midwest Independent Transmission System Operator, Inc., Tenaska Power Services Co. v. Midwest Independent Transmission System Operator, Inc., Cargill Power Markets, LLC v. Midwest Independent Transmission System Operator, Inc., American Electric Power Service Corporation, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C., Ameren Services Company, Midwest Independent Transmission System Operator, Inc., Ameren Services Company; Notice of Commission Staff Participation at Technical Conference

March 5, 2004

Representatives of the Commission's staff will attend a technical conference pertaining to the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) anticipated Energy Markets Tariff Filing. The technical conference will be held on March 10, 2004, from 10 a.m. to 6 p.m., and on March 11, 2004, from 8 a.m. to noon. The conference will take place at the Lakeside Corporate Center (directly across from the Midwest ISO's headquarters), 630 West Carmel Drive, Carmel, Indiana. Further details of the conference are available at *http://www.midwestiso.org/meetings.shtml*.

The purpose of the technical conference is to discuss the Midwest ISO's anticipated Energy Markets Tariff Filing, expected to be filed with the Commission on March 31, 2004. The technical conference is open to the public. During the course of the meeting, it is possible that discussions may overlap with issues pending in the above-captioned dockets.

For more information about the technical conference, contact Patrick Clarey, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, at (317) 249–5937 or *patrick.clarey@ferc.gov*, or Christopher Miller, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov*.

Magalie R. Salas,
Secretary.

[FR Doc. E4–539 Filed 3–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PL03–3–000 and AD03–7–000 (Not Consolidated)]

Price Discovery in Natural Gas and Electric Markets; Natural Gas Price Formation; Staff Notice of Request for Comments

March 5, 2004.

Staff issues this notice to provide an opportunity for comments on the current state of natural gas and electricity price formation, and whether there has been any increase in confidence in natural gas and electric price indices. These comments will assist Staff in evaluating developments since the issuance by the Commission of the *Policy Statement on Natural Gas and Electric Price Indices*, 104 FERC ¶ 61,121 (2003).

Over the past year the Commission has taken several actions to improve the quality of and confidence in price indices that both reflect and influence the formation of wholesale prices for natural gas and electricity. In Docket No. AD03–7, the Commission's Staff held technical conferences on April 24 and June 24, 2003, issued Staff discussion papers, and held a follow-up workshop on July 2, 2003, to explore the desirability of a ''safe harbor'' for good faith reporting of prices to price index developers.

The conferences and workshops led the Commission to issue the Policy Statement in Docket No. PL03–3 on July 24, 2003.[1] In the Policy Statement, the Commission explained what it expects of natural gas and electricity price index developers and companies that report transaction data to index developers, and created a rebuttable presumption that companies that report trade data in accordance with the standards of the Policy Statement are doing so in good faith and will not be subject to administrative penalties for inadvertent errors in reporting.

The Commission further required, prospectively, that price indices used in jurisdictional tariffs meet the criteria set forth in the Policy Statement and reflect adequate liquidity at the referenced index points. The Commission also directed Staff to monitor the level of reporting of transaction data to price index developers and the adherence by market participants and price index developers to the Policy Statement standards.

With respect to prospective use of price indices in tariffs, the Commission issued separate orders on tariff filings where jurisdictional companies had proposed to make changes in indices used in the tariff. The Commission accepted and suspended the tariff sheets, permitting them to become effective subject to further action by the Commission following receipt of a report on the compliance and liquidity issues from the Commission Staff.[2] The reports are due April 30, 2004.[3]

Staff has actively monitored industry response to the Policy Statement. In September 2003 Staff sent a survey to 266 companies seeking information on their price reporting practices before and after issuance of the Policy Statement. To address the liquidity requirement of the Policy Statement, Staff held a workshop on liquidity issues on November 4, 2003. To evaluate whether index developers have adopted the Policy Statement standards, Staff solicited statements from price index developers, which statements were filed in January 2004 in Docket No. PL03–3–000.

Meanwhile, on November 17, 2003, the Commission issued two orders adopting behavior rules for market participants. In Docket Nos. EL01–118–000 and -001 the Commission issued its *Order Amending Market-Based Rate Tariffs and Authorizations*, 105 FERC ¶ 61,218, and in Docket No. RM03–10–000 the Commission issued Order No. 644, *Amendment to Blanket Sales Certificates*, 105 FERC ¶ 61,217. Both of these orders adopt a behavior rule requiring that, to the extent holders of market-based rate authority and sellers using blanket certificate sales authority report transactions to entities that

[1] *See* the Policy Statement, ¶¶ 6–32, for a detailed discussion of the role of price indices in energy markets, concerns with price index quality and reliability, industry efforts to improve index quality, and the steps leading to the Commission's issuance of the Policy Statement. Subsequently the Commission also issued an *Order on Clarification of Policy Statement on Natural Gas and Electric Price Indices*, 105 FERC ¶ 61,282 (2003).

[2] *See* ''Order Accepting and Suspending Tariff Sheets, Subject to Further Proceedings'' in *Transcontinental Gas Pipe Line Company*, 104 FERC ¶ 61,181 (2003); *Northern Natural Gas Company*, 104 FERC ¶ 61,182 (2003); and *Natural Gas Pipeline Company of America*, 104 FERC ¶ 61,190 (2003).

[3] *See, e.g.*, Northern Natural Gas Company, *et al.*, ''Notice Deferring Submission of Staff Reports,'' Docket Nos. RP03–533–000, *et al.*, issued January 27, 2004.

develop and publish price indices, they must report such transactions in accordance with the Policy Statement.

The behavior rules orders also directed all market-based rate sellers and holders of blanket certificate authority to notify the Commission whether or not they report prices to index developers in accordance with the Policy Statement. Numerous such notices were filed in January 2004.

Finally, Staff will soon send a second survey to a set of companies that buy and/or sell natural gas and electricity in wholesale markets. The results of this second phase survey will be an important part of Staff's status report to the Commission on price formation.

As noted, the Commission instructed Staff to monitor ''both the level of reporting to index developers and the amount of adherence to the standards set forth herein,'' Policy Statement ¶ 43, and to report to the Commission about specific indices involved in certain tariff filings. The issues of the robustness of voluntary price reporting, price index developer adherence to Policy Statement standards, and the reliability of referenced index points all are related to the overall progress in improving the quality of price indices and of encouraging greater voluntary reporting of transaction data by market participants. As a result, Staff intends to report to the Commission on overall progress in restoring confidence in price indices and voluntary price formation as well as on the adequacy of indices referenced in specified tariffs.

While Staff will shortly conduct the second industry survey to determine whether steps taken by the Commission have assisted the industry in restoring vitality and confidence in published price indices, Staff also provides this opportunity for comments by interested parties on changes since the issuance of the Policy Statement.

Price Index Developers

A number of price index developers filed statements in Docket No. PL03–3–000 in January. At this time, Staff provides a further opportunity for any natural gas or electricity price index developer to submit a statement regarding its compliance with the Policy Statement standards, or to supplement its previous statement. Specifically, we request that index developers file in Docket No. PL03–3–000 (1) a statement whether the developer has adopted, or will adopt, the standards of Policy Statement ¶ 33 and (2) a description of the developer's practices in each of the five areas identified by the Commission in the Policy Statement. The description should include the following:

1. *Code of conduct and confidentiality.* Provide a copy of the public portions of any applicable code of conduct or ethics, along with a description of how the public code relates to the treatment of price data obtained, the methodology for calculating indices, and the procedures for assuring confidential treatment of trade data. Provide a sample copy of any uniform confidentiality agreements used with market participants. Explain and document provisions permitting Commission access to price data necessary for performance of the Commission's statutory duties.

2. *Completeness.* Discuss the scope of information collected for use in the indices. Provide sample indices showing how you report ''(a) the total volume, (b) the number of transactions, (c) the number of transaction entities, (d) the range of prices (high/low), and (e) the volume-weighted average price.'' Policy Statement ¶ 33.2. Describe any liquidity measures to inform users about the degree of activity or other indicators of reliability in the prices reported at each trading location.

3. *Data verification, error correction, and monitoring.* Discuss the means by which you verify the prices reported to you. Explain or provide information on any error correction process used, including when and how error corrections are published. Describe and document your data monitoring and surveillance systems, and the steps to be taken (including notifying the Commission or other agencies) in the event anomalous data reported to you cannot be explained or resolved by the data provider.

4. *Verifiability.* Describe the scope of and document the independent audit or verification of your data collection, evaluation, index calculation and index production processes, including whether there is any external process review.

5. *Accessibility.* Describe the availability of your price indices to the industry. Discuss the measures taken to provide the Commission access to relevant data in the event of suspected bad faith reporting or potential manipulation.

Failure to file will lead Staff to operate on the assumption that the index developer has initiated no changes in its practices. Information or data previously provided in any Commission docket or otherwise available publicly may be incorporated by reference in or included with the statement. In addition, index developers are invited to comment on whether the number of price reporting entities and the number of reported fixed price transactions have increased since issuance of the Policy Statement.

Price Reporting Entities

Interested market participants are invited to file comments on the developments since issuance of the Policy Statement. Parties are encouraged to address the following questions:

1. Has the Policy Statement safe harbor for good faith reporting been helpful for your firm in its consideration of whether to engage in the reporting of price transaction data?

2. Have you adopted the standards of ¶ 34 of the Policy Statement or otherwise taken steps to improve the quality of trade data submitted to price index developers?

3. Have changes by price index developers materially improved the transparency of information contained in price indices?

4. Do price index developers provide enough information about the level of trading activity at locations for which index prices are provided?

5. Is it clear to you in publications what information is intended to be price indices and what information is intended to be ''market price indications'' or other market-related information? Do price index developers make clear which prices are indices prepared according to their index methodology?

6. Do you have any specific concerns regarding the quality of price indices? If so, what are they? Please be specific about the basis for the concerns as well as what the concerns are.

7. Do you have more confidence in price indices today than before issuance of the Policy Statement?

Interested parties should submit written comments on the issues outlined above no later than March 26, 2004. The Commission encourages electronic submission of comments in lieu of filing on paper. The Commission's electronic filing system and instructions for filing can be found at the ''eFiling'' link on the Commission's Web site (*http://www.ferc.gov*). Commenters are not required to serve copies of their comments on other commenters. For further information contact Ted Gerarden at 202–502–6187 or *ted.gerarden@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–540 Filed 3–10–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7635–8]

Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Rocky Flats Environmental Technology Site for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents applicable to characterization of transuranic (TRU) radioactive waste at the Rocky Flats Environmental Technology Site (RFETS) proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents are available for review in the public dockets listed in **ADDRESSES.** We will consider public comments received on or before the due date mentioned in **DATES**. EPA will conduct an inspection of waste streams, characterization systems and processes at RFETS to verify that the site can characterize transuranic waste in accordance with EPA's WIPP compliance criteria. EPA will perform this inspection the week of March 29, 2004. This notice of the inspection and comment period accords with 40 CFR 194.8.

DATES: EPA is requesting public comment on the documents. Comments must be received by EPA's official Air Docket on or before April 12, 2004 .

ADDRESSES: Comments may be submitted by mail to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Environmental Protection Agency, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. OAR–2004–0020. Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.B of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Ed Feltcorn, Office of Radiation and Indoor Air, (202) 343–9463. You can also call EPA's toll-free WIPP Information Line, 1–800–331–WIPP or visit our Web site at *http://www.epa/gov/radiation/wipp*.

SUPPLEMENTARY INFORMATION:

I. General Information

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

1. *Docket*. EPA has established an official public docket for this action under Docket ID No. OAR–2004–0020. 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 Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. These documents are also available for review in paper form at the official EPA Air Docket in Washington, DC, Docket No. A–98–49, Category II–A2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday-Thursday, 10 a.m.–9 p.m., Friday-Saturday, 10 a.m.–6 p.m., and Sunday 1 p.m.–5 p.m.; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday-Friday, 9 a.m.–5 p.m. As provided in EPA's regulations at 40 CFR Part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

2. *Electronic Access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification 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. However, late comments may be considered if time permits.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, 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. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OAR–2004–0020. 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 electronic mail (e-mail) to *a-and-r-docket@epa.gov,* Attention Docket ID No. OAR–2004–0020. 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.

2. *By Mail.* Send your comments to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Environmental Protection Agency, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. OAR–2004–0020.

3. *By Hand Delivery or Courier.* Deliver your comments to: Air and Radiation Docket, EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OAR–2004–0020. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.A.1.

4. *By Facsimile.* Fax your comments to: (202) 566–1741, Attention Docket ID. No. OAR–2004–0020.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

DOE is developing the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Pub. L. No. 102–579), as amended (Pub. L. No. 104–201), TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision stated that the WIPP will comply with EPA's radioactive waste disposal regulations at 40 CFR Part 191, Subparts B and C.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratories (LANL) until the EPA determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of Appendix A to 40 CFR Part 194); and (2) (with the exception of specific, limited waste streams and equipment at LANL) prohibit shipment of TRU waste for disposal at WIPP (from LANL or any other site) until EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.22(c)(4) (Condition 3 of Appendix A to 40 CFR Part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decision-making process, the DOE is required to submit to EPA appropriate documentation of quality assurance and waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, DC, and informational dockets in the State of New Mexico for public review and comment.

EPA will perform an inspection of the waste characterization systems and processes for TRU waste at RFETS in accordance with Conditions 3 of the WIPP certification. The purpose of this inspection is for the annual re-evaluation of the transuranic (TRU) waste program at RFETS and to evaluate new activities (*i.e.*, new equipment, such as the Multi Purpose Crate Counter) associated with a particular waste stream (soils/gravels). The

inspection is scheduled to take place the week of March 29, 2004.

EPA has placed a number of documents pertinent to the inspection in the public docket described in **ADDRESSES.** These documents can be found online in EDOCKET ID No. OAR–2004–0020 and also in hard copy form as item II–A2–48 in Docket A–98–49. In accordance with 40 CFR 194.8, as amended by the final certification decision, EPA is providing the public 30 days to comment on these documents.

If EPA determines as a result of the inspection that the proposed waste streams, processes, systems, and equipment at RFETS adequately control the characterization of transuranic waste, we will notify DOE by letter and place the letter in the official Air Docket in Washington, DC, as well as in the informational docket locations in New Mexico. A letter of approval will allow DOE to dispose of TRU waste at the WIPP using the approved characterization processes. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on the certification decision is filed in the official EPA Air Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: March 5, 2004.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 04–5636 Filed 3–10–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7635–2]

Notice of Tentative Approval and Solicitation of Request for a Public Hearing for Public Water System Supervision Program Revisions for the State of Delaware

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval and solicitation of requests for a public hearing.

SUMMARY: Notice is hereby given in accordance with the provision of section 1413 of the Safe Drinking Water Act, as amended, and the requirements governing the National Primary Drinking Water Regulations Implementation, 40 CFR part 142, that the State of Delaware is revising its approved Public Water System Supervision Program. Delaware has adopted the Arsenic Rule that requires community and non-transient non-community water systems to comply with the revised arsenic drinking water standard that established the maximum contamination level (MCL) standard at 10 parts per billion. The arsenic drinking water standard to be expressed as 0.010 mg/L. EPA has determined that these revisions, all effective September 19, 2003, are no less stringent than the corresponding Federal regulations. Therefore, EPA has decided to tentatively approve these program revisions. All interested parties are invited to submit written comments on this determination and may request a public hearing.

DATES: Comments or a request for a public hearing must be submitted by April 12, 2004. This determination shall become effective on April 12, 2004, if no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, and if no comments are received which cause EPA to modify its tentative approval.

ADDRESSES: Comments or a request for a public hearing must be submitted to the U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. Comments may also be submitted electronically to Steve Maslowski at *maslowski.steven@epa.gov*.

All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Drinking Water Branch, Water Protection Division, U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.
- Office of Drinking Water, Delaware Department of Health and Social Services, Blue Hen Corporate Center, Suite 203, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Steve Maslowski, Drinking Water Branch (3WP22) at the Philadelphia address given above; telephone (215) 814–2371 or fax (215) 814–2318.

SUPPLEMENTARY INFORMATION: All interested parties are invited to submit written comments on this determination and may request a public hearing. All comments will be considered, and, if necessary, EPA will issue a response. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by April 12, 2004, a public hearing will be held.

A request for public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Dated: March 3, 2004.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 04–5512 Filed 3–10–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, March 25, 2004. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, DC, in Dining Room E on the Terrace level of the Martin Building. Anyone planning to attend the meeting should, for security purposes, register no later than Tuesday, March 23, by completing the form found on-line at: *https://www.federalreserve.gov/secure/forms/cacregistration.cfm*

Additionally, attendees must present photo identification to enter the building.

The meeting will begin at 9 a.m. and is expected to conclude at 1 p.m. The Martin Building is located on C Street, NW., between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under various consumer financial services laws and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Community Reinvestment Act: Discussion of issues in connection with the proposed changes to Regulation BB, which implements the Community Reinvestment Act.

Rules for Uniform Standards for Clear and Conspicuous Disclosures:

Discussion of issues in the proposed rules to establish more uniform standards for providing disclosures for: Regulation B, which implements the Equal Credit Opportunity Act; Regulation E, which implements the Electronic Fund Transfer Act; Regulation M, which implements the Consumer Leasing Act; Regulation Z, which implements the Truth in Lending Act; and Regulation DD, which implements the Truth in Savings Act.

General Accounting Office (GAO) Study on Predatory Lending: Discussion of GAO's findings, conclusions, and recommendations.

Committee Reports: Council committees will report on their work.

Other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Ann Bistay, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Information about this meeting may be obtained from Ms. Bistay, 202–452–6470.

Board of Governors of the Federal Reserve System, March 5, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–5452 Filed 3–10–04; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–30]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Health Hazard Evaluations/Technical Assistance and Emerging Problems, OMB No. 0920–0260–EXTENSION–National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background

In accordance with the mandates of the Occupational Safety and Health Act of 1970 and the Federal Mine Safety and Health Act of 1977, the National Institute for Occupational Safety and Health (NIOSH) responds to requests for health hazard evaluations to identify chemical, biological or physical hazards in workplaces throughout the United States.

To comprehensively evaluate hazards in response to a request for a health hazard evaluation, NIOSH frequently conducts an on-site evaluation. The main purpose of an on-site evaluation is to help employers and employees identify and eliminate occupational health hazards. The interview and questionnaires are specific to each workplace and its suspected disease(s) and hazards. The questionnaires are composed of items that were developed from standard medical and epidemiologic techniques.

NIOSH distributes interim and final reports of health hazard evaluations (excluding personal identifiers) to requesters, employers, employee representatives, the Department of Labor; and as appropriate to the Occupational Safety and Health Administration or Mine Safety and Health Administration, and other state and federal agencies.

NIOSH administers a followback program to assess the effectiveness of its health hazard evaluation program in reducing workplace hazards. This program entails the mailing of followback questionnaires to employer and employee representatives in the workplace and, in some instances, to a followback on-site evaluation. Due to the large number of investigations conducted each year, as well as the diverse and unpredictable nature of these investigations, and the need to respond quickly to requests for assistance, NIOSH requests consolidated clearance for data collection of its health hazard evaluations. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs)	Total burden hours
Employees (interview)	4000	1	15/60	1000
Employees (questionnaire)	4000	1	30/60	2000
Employees (followback)	300	2	30/60	300
Employers (followback)	300	2	30/60	300
Total				3600

Dated: March 4, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–5516 Filed 3–10–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Participatory Research on Community Interventions To Increase the Utilization of Effective Cancer Preventive and Treatment Services

Announcement Type: New.

Funding Opportunity Number: PA 04087.

Catalog of Federal Domestic Assistance Number: 93.945.

Key Dates:

Letter of Intent Deadline: March 26, 2004.

Application Deadline: May 10, 2004.

Executive Summary: None.

I. Funding Opportunity Description

Authority: Public Health Service Act, sections 301(a) and 317(k)(2), as amended.

Purpose: The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2004 funds for a grant program from the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) Division of Cancer Prevention and Control (DCPC) and the Public Health Practice Program Office (PHPPO) Office of Science and Extramural Research. This announcement supports research to evaluate the effectiveness of community interventions to increase the use by health plans, health insurers, and/or health care providers of evidence-based cancer screening and treatment services in the following three areas: (1) To increase provision of colorectal cancer screening; (2) to increase use of shared decision making for prostate cancer screening; or (3) to increase use of systematically developed guidelines for the diagnosis and treatment of ovarian cancer. Applicants may submit separate applications for one or more of the three above areas of research. Findings from the funded projects will contribute to reductions in cancer morbidity and mortality, improvements in the quality of life for cancer patients, and increases in the use of public health and prevention research in everyday health practice.

This program announcement addresses the United States Department of Health and Human Services (DHHS) Strategic Plan Goal to improve the quality of health care services; the HealthierUS Initiative ''Prevention: Getting Preventive Screening; and ''Healthy People 2010'' focus areas of Cancer, Access to Quality Health Services, Educational and Community-Based Programs, and Public Health Infrastructure.

Measurable outcomes of the program will be in alignment with the following performance goal for NCCDPHP: Support prevention research to develop sustainable and transferable community-based behavioral interventions: The following performance goal will be in alignment with PHPPO: Strengthen the public health infrastructure by stimulating extramural prevention research to discover how to apply the latest biomedical research at the local level and how to supply frontline public health workers with evidence of what works.

Research Objectives: The specific research objective for this program announcement is to stimulate investigator-initiated, participatory research to evaluate the effectiveness of community interventions to: (1) Increase provision of colorectal cancer screening; (2) increase use of shared decision making for prostate cancer screening; or (3) increase use of systematically developed guidelines for the diagnosis and treatment of ovarian cancer.

This objective addresses research gaps identified in recent reviews conducted by the Institute of Medicine (IOM), the Cochrane Effective Practice and Organization of Care group, and the Agency for Healthcare Research and Quality (AHRQ). In Fulfilling the Potential of Cancer Prevention and Early Detection, the IOM identified the possibility of substantial near term reductions in cancer incidence and mortality if health plans, health care providers, and health insurers implemented evidence-based cancer screening services. The report also illustrated problems for insurers, plans, providers and patients that result from implementing new screening technologies when evidence on the balance of benefits and harms from screening is uncertain. In Ensuring Quality Cancer Care, the IOM concluded that for many cancer patients, a wide gap exists between patients' experiences with cancer care and the evidence-based quality diagnostic and treatment services that are recommended. In The Unequal Burden of Cancer, the IOM provided evidence that the cancer burden was greater and the provision of services was less for many racial, ethnic and underserved populations.

Although a Cochrane systematic review of research on the effectiveness of interventions to change health care systems or health care provider practices found that some interventions are effective in certain circumstances, a recent systematic review for AHRQ that focused specifically on interventions to increase the use of evidence-based cancer control practices found that evidence was insufficient to make recommendations. In addition, interventions found to be efficacious in research may not be translated into practice because the research often does not involve the communities of interest in the research and does not address community needs. Therefore, additional research is needed on the effectiveness of community interventions to increase use of evidence-based cancer screening and treatment services. This research should also involve the affected communities of health plans, providers, and insurers in the research process to increase the likelihood that resulting interventions can be adopted into practice.

Activities: Awardee activities for this program are as follows:

(1) Conduct studies to evaluate the effectiveness of community interventions to increase use of evidence-based cancer screening and treatment services, specifically to:

(a) Increase provision of colorectal cancer screening.

(b) Increase use of shared decision making for prostate cancer screening.

(c) Increase utilization of systematically developed guidelines for the diagnosis and treatment of ovarian cancer.

(2) Involve the affected communities, *i.e.*, health plans, health care providers, and health insurers in the research process.

For purposes of this announcement the following definitions are used:

Community refers to health plans, health care providers, and/or health insurers, *i.e.*, the people, organizations or networks (including faith-based) that would be affected by the community interventions and/or that would implement such interventions. The investigator for each research proposal must define the relevant community or communities using a set of tangible criteria. The criteria can include a common interest, identity, or characteristic. These communities need not be defined geographically.

Community interventions can include any of a variety of activities implemented to change health system or

health care provider behavior to increase the use of evidence-based cancer screening and treatment services. These may include, but are not limited to, changes in insurance coverage, incentives, health care provider training, reminders to providers or patients, audits and feedback, opinion leaders, academic detailing, role modeling, or standardized performance measures, *e.g.*, the Health Employer Data and Information Set provided at: *http://www.ncqa.org/communications/publications/hedispub.htm*).

Participatory research involves collaboration with the community being studied, at least in formulating the research questions and in interpreting and applying the findings, and possibly also in developing study methods and interventions and/or analyzing data, according to the community's interests, time, and expertise. The community or communities that are to be involved, as participants in the research process must be explicitly identified. This announcement is not limited to any particular model of participatory research. Applicants should also consult guidelines on participatory research, such as those provided at: *http://www.ihpr.ubc.ca/guidelines.html* and the campus-community partnership principles at: *http://futurehealth.ucsf.edu/ccph/principles.html#principles.*

Effectiveness of community interventions means that the community intervention in an intervention group results in a measurable and statistically significant increase in the use of evidence-based colorectal screening services, shared decision making for prostate cancer screening, or evidence-based diagnostic and treatment services for ovarian cancer. Effectiveness is determined when comparing the intervention group to the comparison group or groups.

Evidence-based colorectal cancer screening services include only tests evaluated and recommended by the U.S. Preventive Services Task Force (USPSTF). Such tests are performed in the absence of symptoms or signs in order to identify cancer at an early stage or to identify precursor lesions. The USPSTF has found evidence that these tests are effective in reducing mortality and that the balance of risks and benefits is positive.

Shared decision making for prostate cancer screening, for purposes of this announcement, refers only to definitions provided in the Guide to Community Preventive Services recommendations on the effectiveness of community interventions to increase the use of informed decision making for cancer screening and in the U.S. Preventive Services Task Force recommendations on shared decision making. Shared decision making occurs when a patient and his health care provider discuss screening in a clinical setting and decide together whether to screen or not. For shared decision making to occur, the patient must understand the nature and risks of the cancer, the screening test(s) and treatments and their likely consequences, including risks (harms), limitations, benefits, alternatives, and uncertainties. Further, the patient must consider his or her preferences as appropriate, participate in decision making at a personally desirable level, and either make a decision consistent with his or her preferences and values or elect to defer the decision to a later time. For prostate cancer screening, shared decision making must include making patients aware of the following from the USPSTF: There is good evidence that Prostate Specific Antigen screening can detect early-stage prostate cancer, but there is mixed and inconclusive evidence that early detection improves health outcomes; screening is associated with important harms, including frequent false-positive results and unnecessary anxiety, biopsies, and potential complications of treatment of some cancers that may never affect or have affected a patient's health; and evidence is insufficient to determine whether the benefits outweigh the harms.

Systematically developed guidelines for the diagnosis and treatment of ovarian cancer include only diagnostic and treatment services for ovarian cancer recommended by a National Institutes of Health (NIH) consensus panel or by a review group for the National Cancer Institute Physician Data Query System. These guidelines include referral to a gynecologic oncologist.

Health care involves the care, services, and supplies related to the health of an individual. Health care includes preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, among other services. Health care also includes the sale and dispensing of prescription drugs or devices.

Health plans are individual or group plans that provide or pay the cost of health care. This includes private and public health plans, and includes, for example, health maintenance organizations, preferred provider organizations, long term care and health insurance companies, employee health benefit plans, and any other plan that provides or pays for the costs of health care.

Health care provider is a person who is trained and licensed to give health care, or a place licensed to give health care. Doctors, nurses, hospitals, skilled nursing facilities, some assisted living facilities, and certain kinds of home health agencies are examples of health care providers.

Health insurers/Health insurance—Insurance against financial losses resulting from health issues, preventing, diagnosing and/or treating disease, sickness or accidental bodily injury, as well as from therapeutic, rehabilitative, maintenance, or palliative care.

II. Award Information

Type of Award: Grant.

Fiscal Year Funds: 2004.

Approximate Total Funding: $650,000 for Colorectal Cancer, 650,000 for Ovarian Cancer, 650,000 for Prostate Cancer, $1,950,000 Total.

Approximate Number of Awards: At least three total, including a minimum of one for colorectal cancer, one for ovarian cancer, and one for prostate cancer.

Approximate Average Award: $650,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs.).

Floor of Award Range: None.

Ceiling of Award Range: $650,000.

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Four years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible applicants

Applications may be submitted by the following entities:

- Public nonprofit organizations.
- Private nonprofit organizations.
- Universities.
- Colleges.
- Research institutions.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Others

CDC requires that you submit a Letter of Intent (LOI) if you intend to apply to this Program Announcement. If CDC does not receive your LOI by the LOI deadline specified under IV.3. Submission Dates and Times, your

application will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

If your application is incomplete, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

If your application does not include a plan for measures of effectiveness to demonstrate the accomplishment of the various identified objectives of the grant, as noted in the review criteria below, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

In addition, if your application does not meet the following three eligibility criteria, it will not be entered into the review process and you will be notified that your application did not meet submission requirements:

1. The principal investigator or co-principal investigator must have conducted five or more years of competitively funded peer reviewed research community interventions with health plans, health insurers, and/or health care providers, and have published the findings from that research in peer reviewed journals within the last three years.

2. The applicant's project team must include significant expertise in research in the area of evidence-based cancer preventive or treatment services relevant to the project that will be conducted.

a. For applications related to colorectal cancer, the project team must have significant experience in researching or promoting the use of cancer screening.

b. For applications related to prostate cancer, the project team must have significant experience in researching or promoting shared decision making for cancer screening.

c. For applications related to ovarian cancer, the project team must have significant experience in researching or providing diagnosis and treatment of ovarian cancer.

Such expertise must be evidenced by a history of competitively funded peer reviewed research in that area and publication of the outcomes from this research in peer reviewed journals.

3. The applicant must demonstrate an effective and well-defined working relationship between the research organization and the partnering communities of health care providers, insurers, or plans. One source of documentation of this relationship must be provided in the form of Letters of Support from each partnering community, briefly describing the working relationship.

Documentation of Eligibility

Evidence of meeting the three additional eligibility criteria stated above must be provided as a separate appendix to the application, labeled ''Documentation of Eligibility,'' and the location of the appendix must be identified in the table of contents. This appendix should broadly summarize the additional eligibility criteria listed above including institutional affiliations, and experience and expertise as they relate to the application. However, this appendix should not reiterate or itemize specific details included in the Biographical Sketch provided for each of the key personnel.

These eligibility criteria are to ensure that the proposed research will be of significant quality. Proposed research must meet the rigorous methodological guidelines required of the research to be included in evidence reviews conducted by the USPSTF, AHRQ, and the Guide to Community Preventive Services. Furthermore, proposed research should contribute to strong evidence on the effectiveness of interventions to increase the use of evidence-based cancer control practices.

Individuals Eligible to Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research, and who meets the eligibility criteria specified above for the principal investigator or co-principal investigator, is invited to work with his or her eligible applicant institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI): CDC requires that you submit an LOI if you intend to apply to this Program Announcement. If you fail to submit an LOI, any subsequent application will not be entered into the review process. Although the LOI is not binding, and does not enter into the review of your subsequent application, it will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Your LOI must be written in the following format:

- Maximum number of pages: Three pages
- Font size: 12-point unreduced
- Single spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Written in plain language, avoid jargon

Your LOI must contain the following information:

Page 1

- Descriptive title of the proposed research
- Name, address, E-mail address, and telephone number of the Principal Investigator
- Names of other key personnel
- Participating institutions
- Number and title of this Program Announcement (PA)

Pages 2–3

- A non-binding summary of the proposed project, which will be used in planning for peer review of the

applications. The summary should include information about the area of research interest (colorectal cancer screening, prostate cancer shared decision making, or researching or providing diagnosis and treatment of ovarian cancer), the communities with which the investigators will collaborate, the community intervention(s), and the basic study design.

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact PGO–TIM staff at 770–488–2700, or contact GrantsInfo, Telephone (301)435–0714, E-mail: *GrantsInfo@nih.gov*.

Your research plan should address activities to be conducted over the entire project period. It should also describe an effective and well-defined working relationship between the researchers and the partnering community or communities (of health care providers, insurers, or plans) in which these partnering communities are active participants with the researcher in the research process. The research application should also include a clear statement of the roles of the community participants. In addition, be sure to address the criteria that will be used to review your application. These criteria are listed at V. Application Review Information.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm*.

This PA uses just-in-time concepts. It also uses the modular budgeting as well as non-modular budgeting formats. See *http://grants.nih.gov/grants/funding/modular/modular.htm* for additional guidance on modular budgets. Specifically, if you are submitting an application with direct costs in each year of $250,000 or less, use the modular budget format. Otherwise, follow the instructions for non-modular budget research grant applications.

Additional requirements that may require you to submit additional documentation with your application are listed in section VI.2. Administrative and National Policy Requirements.

IV.3. Submission Dates and Times

LOI Deadline Date: March 26, 2004.

Application Deadline Date: May 10, 2004.

Explanation of Deadlines: LOIs or Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your LOI or application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the LOI or application by the closing date and time. If CDC receives your LOI or application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the LOI or application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your LOI or application. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the LOI or application deadline. This will allow time for LOIs or applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Construction costs and pieces of equipment costing more than $10,000.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Awards will not allow reimbursement of pre-award costs.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail or delivery service to: Technical Information Management—PA# 04087, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

LOI's may not be submitted electronically at this time.

Application Submission Address: Submit the original and five hard copies of your application by express mail or delivery service to: Technical Information Management—PA# 04087, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In their written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The criteria are as follows:

Measures of Effectiveness: You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the

concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative methods?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers? Does the principal investigator have significant and successful experience in conducting community intervention research with health plans, health insurers, and/or health care providers? Does the project team have expertise in research in the area of evidence-based cancer preventive or treatment services in which the project will be conducted (in increasing cancer screening use, for colorectal cancer projects; in shared decision making for cancer screening, for prostate projects; and in diagnosis and treatment of ovarian cancer, for ovarian cancer projects)?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

1. Study design and methods used for the proposed community intervention research must be of sufficient quality to qualify for inclusion in evidence-based reviews conducted for the Guide to Community Preventive Services. Those quality criteria are described in an early Community Guide publication in the American Journal of Preventive Medicine.

2. Proposed screening tests, informed decision making interventions, treatments, and diagnostic services, must be consistent with systematic reviews, recommendations and definitions, as noted in the definitions section above.

3. The applicant must demonstrate an effective and well-defined working relationship between the researchers and the partnering community or communities (of health care providers, or one or more insurers or plans) in which these partnering communities are active participants with the researchers in the research process. Reviewers will refer to both the research plan of the application and Letters of Support (Section III.3.) from the community.

4. The development, implementation, and maintenance of an annual information-exchange program between the institutional researchers and the community members (even if the institutional researchers are also community members) is required. This information-exchange program must describe the project's current level of community input and involvement, its progress in accomplishing its objectives, and a summary of the relevant findings the research has produced. Documentation of this program must be in the form of annual reports that use plain language, as specified by Section 508 of the Workforce Rehabilitation Act, are easily comprehendible, and readily accessible to Community Members. Applicant's budgets must reflect the cost required for their information-exchange program.

(5) The proposed research must be judged by the reviewers as likely to have a substantial impact on the pursuit of the project's goals.

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? This will not be scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO), and for responsiveness by PHPPO. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the Program Announcement will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section convened by PHPPO in accordance with Department of Health and Human Services requirements, and according to the review criteria listed above. As part of the initial merit review, all applications may:

- Undergo a process in which only those applications deemed to have the highest scientific merit, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique summarizing the discussion of the review panel.
- Receive a second level review by the Secondary Review Panel to be appointed by CDC.

Award Criteria: Criteria that will be used to make award decisions include:

- Scientific merit (as determined by peer review)
- Availability of funds
- Programmatic priorities
- Recommendations by the Secondary Review Panel

V.3. Anticipated Announcement and Award Dates

September 1, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National

Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–6 Patient Care
- AR–8 Public Health System Reporting Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
- AR–14 Accounting System Requirements
- AR–15 Proof of Non-Profit Status
- AR–16 Security Clearance Requirement
- AR–22 Research Integrity
- AR–23 States and Faith-Based Organizations
- AR–24 Health Insurance Portability and Accountability Act Requirements
- AR–25 Release and Sharing of Data

Additional information on these requirements can be found on the CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting

If awarded, you must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC Web site) no less than 90 days before the end of the budget period. This annual progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness Progress Report.

f. Annual Report from Information-Exchange Program.

g. Additional Requested Information.

2. Financial status report no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For scientific/research issues, contact: Ralph Coates, Ph.D., Extramural Project Officer, Centers for Disease Control and Prevention, NCCDPHP/DCPC/OD, 4770 Buford Highway, NE, MS K–52, Atlanta, GA 30341–3717, Telephone: 770–488–3003, E-mail: *RCoates@cdc.gov.*

For questions about peer review, contact: Joan Karr, Ph.D., Scientific Review Administrator, Centers for Disease Control and Prevention, PHPPO/OD/ESA, 4770 Buford Highway, NE (MS K–38), Atlanta, GA 30341, Telephone number: 770–488–2597, Fax: 770–488–8200, E-mail address: *JKarr@cdc.gov.*

For financial, grants management, or budget assistance, contact: Sharon Robertson, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2748, E-mail: *sqr2@cdc.gov.*

VIII. Other Information

References

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Dated: March 4, 2004.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–5433 Filed 3–10–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Regional Academic Environmental Public Health Centers

Announcement Type: New.

Funding Opportunity Number: 04114.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates: Letter of Intent Deadline: April 12, 2004.

Application Deadline: May 10, 2004.

I. Funding Opportunity Description

Authority: Section 301 and 317 of the Public Health Service Act, [42 U.S.C. 241 and 247(b)], as amended.

Purpose: The purpose of the program is to facilitate the development of an integrated national system for academic institutions to assist and support state and local public health departments, and tribal health agencies in the delivery of environmental health services. This announcement will fund five academic institutions to serve as regional centers (one in each of the following regions: Northeast, Southeast, Midwest, Northwest and Southwest). The Centers will support environmental public health activities utilizing a framework that is based on the Ten Essential Public Health Services, the Ten Essential Environmental Services, Core Competencies of Effective Practice of Environmental Health (See Addendum), and the Centers for Disease Control's (CDC) A National Strategy to Revitalize Environmental Public Health Services, published September, 2003. (See: *http://www.cdc.gov/nceh/ehs/Docs/NationalStrategy2003.pdf)* This program addresses the ''Healthy People 2010'' focus areas of Environmental Health, Public Health Infrastructure, and Education and Community-Based Programs.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Environmental Health (NCEH): Increase the capacity of state and local health departments to deliver environmental health services to their communities.

Activities: The Awardees will assist state and local health departments in increasing or enhancing environmental health capacity by providing technical assistance in the areas of: (1) Outreach; (2) health hazard evaluations/investigations; and (3) program evaluation and training. These activities will result in the implementation of comprehensive state-of-the-art environmental health services, *e.g.,* programs and/or interventions that positively impact air quality, water, waste management, integrated pest management, and/or food safety.

Awardees should engage in such activities as described below:

- Provide technical assistance to state and local environmental public health departments or their chosen entities in the realm of health hazard evaluations and investigations.
- Collaborate with state and local programs to assist them in evaluating their programs, including cost benefit analysis, prevention effectiveness analysis, and monitoring and responding to the environmental antecedents of disease occurrence.
- Train and educate state and local environmental public health department staff, where necessary or requested by environmental public health department staff, using already developed curriculum, to deliver environmental public health services utilizing the framework of the Ten Essential Public Health Services, the Ten Essential Environmental Services, Core Competencies of Effective Practice of Environmental Health, and CDC's A National Strategy to Revitalize Environmental Public Health Services.
- Disseminate findings.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

- Provide technical assistance and consultation to the award recipient to refine the project plan, data and information collection, and analysis instruments.
- Assist awardees with background information and in forming collaborative interactions.
- Assist awardees with preparation, review and clearance of manuscripts.
- Facilitate interaction among awardees and integration of activities into state and local environmental public health programs.
- Evaluate effectiveness and quality of environmental health services related to awardees activities.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $800,000.

Approximate Number of Awards: Five total awards will be made based on one per region. The regions are designated as follows:

- Northeast (ME, VT, NH, MA, RI, CT, NY, NJ, PA, DE, MD, VA, District of Columbia)
- Southeast (NC, SC, KY, TN, GA, FL, AL, MS, AR, LA, U.S. Virgin Islands, Puerto Rico)
- Midwest (WV, MI, OH, IN, WI, IL, MN, IA, MO, KS)
- Northwest (ND, SD, NE, MT, WY, ID, WA, OR, AK)
- Southwest (OK, TX, CO, NM, UT, AZ, NV, CA, HI, Pacific Islands)

Approximate Average Award: $160,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

Floor of Award Range: None.

Ceiling of Award Range: $200,000.

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Three years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by:

- Academic institutions, including universities and colleges with accredited undergraduate or graduate environmental health programs.
- Accredited Schools of Public Health.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

This announcement is for submission of proposals that are not research. If your application contains research, it will be considered non-responsive to the announcement.

If your application is incomplete or non-responsive to the requirements listed below, it will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Eligibility is limited to academic institutions because of their expertise and resources in environmental public health that is available to support state and local environmental public health programs. Additionally, academic institutions have provided state and local health departments, environmental public health agencies, and other environmental health organizations with the trained workforce needed to deliver environmental health services.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Letter of Intent (LOI)

Your LOI must be written in the following format:

- Maximum number of pages: One page.
- Font size: 12-point unreduced.
- Single spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Written in plain language, avoid jargon.

Your LOI must contain the following information:

- Name, address, and telephone number for key contact.
- Brief description of the proposed project.

Application

You must include a project narrative with your application forms. Your narrative must be submitted in the following format:

- Maximum number of pages: 25.

If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.

- Font size: 12 point unreduced.
- Double spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Describe your organizational resources and structure.
- Describe how the project will be administered, including job descriptions for all project positions.
- Describe the project's operational plan to function as a regional center. The operational plan should include the following components: (1) Description of the identified environmental health conditions within your region; (2) description of the resources available to support state and local health departments in addressing environmental public health issues; (3) description of the proposed activities to support state or local environmental public health programs; (4) knowledge and ability to educate and/or implement the ten essential environmental health and/or public health services, core function, and CDC strategy as they relate to proposed activities; (5) description of current and/or future partnerships with environmental public health programs and their need for assistance and support related to the delivery of environmental health services; (6) long and short term objectives, timelines and schedules for completion, and expected long and short term measurable outcomes; and (7) methodology for sustainability of activities or interventions beyond the funded period of the cooperative agreement.
- Describe the project's evaluation plan to measure the process and outcomes.
- Budget justifications.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Up to 30 pages of appendices may be included in the application. This may include: Curriculum Vitaes, Resumes, Organizational Charts, Letters of Support, etc.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

LOI Deadline Date: April 12, 2004.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: May 10, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather

delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This program announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Funding restrictions, which must be taken into account while writing your budget, are as follows: None.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm*

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to: Daneen Farrow-Collier, CDC/NCEH, 4770 Buford Highway, F–28, Atlanta, GA 30341, Telephone: 770–488–4945, Fax: 770–488–7310, E-mail: *farrow-collier@cdc.gov*.

Application Submission Address: Submit your application by mail or express delivery service to: Technical Information Management—PA04114, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

1. Coordination and Collaboration (25 points)

The extent to which the applicant documents its collaboration with the community to implement the objectives of the project. This includes describing its relationship with environmental public health departments and other environmental agencies, academia, and community-based organizations as evidenced by documenting specific environmental public health issues or needs, letters of support, memoranda of agreement, and other documented evidence. The applicants may include up to ten letters of commitment (dated within the last three months) from key partners, participants, and community leaders that detail their participation in and support of the proposed activities.

2. Understanding of the Problem (20 points)

The extent to which the applicant understands the public health, social and economic consequences of inadequate environmental public health service delivery in their region based upon health and demographic indicators. This includes factors based on disease burden by age, gender and racial/ethnic groups, mortality rates, incidence, program experience, existing capacity, and infrastructure.

3. Objectives and Methods (20 points)

a. The extent to which the applicant has developed sound, feasible objectives that are consistent with the activities described in this announcement and are specific, measurable and time-framed.

b. The extent to which the applicant describes the specific activities and methods to achieve each objective.

c. The extent to which the proposed timeline and schedules are feasible. The timeline should include a tentative work plan for the duration of the project.

d. The extent to which the proposed activities or the project can be sustained beyond the funded period.

e. The extent to which the intent and desired outcomes for the proposed activities can be succinctly stated.

4. Program Evaluation (15 Points)

a. The evaluation plan should describe useful and appropriate strategies and approaches to monitor and improve the quality, effectiveness, and efficiency of the project.

b. The extent to which the applicant proposes to measure the progress and the overall impact of the project in terms of its contribution to improving the delivery of environmental health services. Examples are: (1) The reduction of environmentally related risk factors known to contribute to disease; (2) decreases in morbidity and mortality; and/or (3) the impact on incidence and prevalence of environmentally induced illness and disease.

5. Implementation of CDC's Strategy To Revitalize Environmental Public Health Services (10 Points)

The extent to which the applicant's operation plan has incorporated components of CDC's Strategy to Revitalize Environmental Public Health Services into developing an intervention or enhancing capacity. Specifically, the centers should demonstrate the ability to assist communities in implementing all ten of the essential environmental health and/or public health services, and core competencies.

6. Project Management and Staffing (10 Points)

The extent to which the applicant documents skills, ability, and experience of key staff who will be responsible for developing, implementing, and carrying out the requirements of the project. Specifically, the applicant should: describe staff roles in the development and implementation of the project, their specific responsibilities, and their level of effort and time commitment. If necessary, assurances should be provided to demonstrate the applicant's ability to fill key positions though its personnel hiring system within a reasonable amount of time after receiving funds.

7. Budget Justification (not scored)

The extent to which the budget is clearly explained, adequately justified, and is reasonable and consistent with the stated objectives and planned activities.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff and for responsiveness by NCEH. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above.

In addition, the following factor may affect the funding decision: The geographic location of applicant

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr–table-search.html*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–8 Public Health System Reporting Requirements
- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–25 Release and Sharing of Data

Additional information on these requirements can be found on the CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report and annual progress report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be sent to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Daneen Farrow-Collier, Project Officer, CDC/NCEH, 4770 Buford Highway, Atlanta, GA 30341, Telephone: 770–488–4945, Fax: 770–488–7310, Email: *farrow-collier@cdc.gov.*

For financial, grants management, or budget assistance, contact: Mildred Garner, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2745, E-mail: *mgarner@cdc.gov.*

Dated: March 4, 2004.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–5438 Filed 3–10–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Study Team for the Los Alamos Historical Document Retrieval and Assessment Project

The Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Public Meeting of The Study Team for the Los Alamos Historical Document Retrieval and Assessment Project.

Time and Date: 5 p.m.–7 p.m. (Mountain Time), March 30, 2004.

Place: Cities of Gold Hotel in Pojoaque (15 miles north of Santa Fe on U.S. 84/285), 10–B Cities of Gold Road, Santa Fe, New Mexico 87506, telephone 505–455–0515.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with the Department of Energy (DOE) and replaced by MOUs signed in 1996 and 2000, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992, 1996, and in 2000, between the Agency for Toxic Substances and Disease Registry (ATSDR) and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This study group is charged with locating, evaluating, cataloguing, and copying documents that contain information about historical chemical or radionuclide releases from facilities at the Los Alamos National Laboratory since its inception. The purpose of this meeting is to review the goals, methods, and schedule of the project, discuss progress to date, provide a forum for community interaction, and serve as a vehicle for members of the public to express concerns and provide advice to CDC.

Matters To Be Discussed: Agenda items include a presentation from the National Center for Environmental Health (NCEH) and its contractor regarding the draft Interim Report of the project, the status of project work, and the outlook for continued CDC work at Los Alamos. There will be time for public input, questions, and comments.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Phillip R. Green, Public Health Advisor, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 1600 Clifton Road, N.E. (MS–E39), Atlanta, GA 30333, telephone (404) 498–1717, fax (404) 498–1811.

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 ATSDR.

Dated: March 5, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–5445 Filed 3–10–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee (SRSHES)

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) and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy Sites: Savannah River Site Health Effects Subcommittee (SRSHES).

Time and Date: 8 a.m.–3:30 p.m., April 6, 2004.

Place: Adam's Mark Hotel Columbia, 1200 Hampton Street, Columbia, South Carolina 29201, telephone 803–771–7000, fax 803–254–2911.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, and replaced by MOUs signed in 1996 and 2000, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992, 1996, and in 2000, between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community interaction and serve as a vehicle for community concerns to be expressed as advice and recommendations to CDC and ATSDR.

Matters to be Discussed: Agenda items include: a Report by Advanced Technologies and Laboratories International, Inc.; CDC Presentation on Completed Dose Reconstruction Projects at Other Sites; and Update from the National Institute for Occupational Safety and Health.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Phillip Green, Executive Secretary, SRSHES, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 1600 Clifton Road, NE., (E–39), Atlanta, Georgia 30333, telephone (404) 498–1800, fax (404) 498–1811.

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 ATSDR.

Dated: March 5, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–5444 Filed 3–10–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10003, CMS–2728, and CMS–R–39]

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:* Medicare+Choice Appeals Notices, ''Notice of Denial of Medical Coverage'', ''Notice of Denial Payment'; *Form No.:* CMS–10003 (OMB# 0938–0829); *Use:* Section 1852(g)(1)(B) requires M+C organizations to provide determinations to deny coverage (*i.e.*, medical services or payment) in writing and include a statement in understandable language of the reasons for the denial and a

description of the reconsideration and appeals processes. These notices fulfill the statutory requirement.; *Frequency:* On occasion and other: distribution; *Affected Public:* Individuals or households, business or other for-profit, not-for-profit institutions; *Number of Respondents:* 211; *Total Annual Responses:* 71,200; *Total Annual Hours:* 7,120.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* End Stage Renal Disease Medical Evidence Report Medicare Entitlement and/or Patient Registration and Supporting Regulations in 42 CFR 405.2133; *Form No.:* CMS–2728 (OMB# 0938–0046); *Use:* This form captures the necessary medical information required to determine Medicare eligibility of an end stage renal disease claimant. It also captures the specific medical data required for research and policy decisions on this population as required by law.; *Frequency:* weekly, monthly, quarterly, semi-annually and annually; *Affected Public:* Individuals or households, business or other for-profit, not-for-profit institutions; *Number of Respondents:* 100,000; *Total Annual Responses:* 100,000; *Total Annual Hours:* 75,000.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Home health Medicare Conditions of Participation (CoP) Information Collection Requirements and Supporting Regulations in 42 CFR 484.10, 484.12, 484.14, 484.16, 484.18, 484.36, 484.48, and 484.52; *Form No.:* CMS–R–39 (OMB# 0938–0365); *Use:* 42 CFR part 484 outlines Home Health Agency Medicare CoP to ensure HHAs meet the Federal patient health and safety regulations; *Frequency:* Annually; *Affected Public:* Business or other for-profit, not-for-profit institutions, Federal government, and State, local or tribal government; *Number of Respondents:* 7,422; *Total Annual Responses:* 7,422; *Total Annual Hours:* 854,891.

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; Fax (202)395–6929.

Dated: March 4, 2004.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–5412 Filed 3–10–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–297]

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.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Request for Employment Information; *Form No.:*CMS–R–297 (OMB# 0938–0787); *Use:* This information is needed to determine whether a beneficiary can enroll in part B under section 1837(i) of the Act and/or qualify for a reduction in the premium amount under section 1839(b) of the Act.; *Frequency:* On occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 5000; *Total Annual Responses:* 5000; *Total Annual Hours:* 750.

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: March 4, 2004.

John P. Burke III,

Paperwork Reduction Act Team Leader, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–5413 Filed 3–10–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Industry Exchange Workshop on FDA Clinical Trial Requirements; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) Detroit District, in cooperation with the Society of Clinical Research Associates, (SoCRA) is announcing a workshop on FDA clinical trial statutory and regulatory requirements. Topics for discussion include: Pre-IND(investigational new drug application) meetings and FDA meeting process, medical device, drug and biological product aspects of clinical research, investigator initiated research, informed consent requirements, adverse event reporting, how FDA conducts bioresearch inspections, ethics in subject enrollment, FDA regulation of Institutional Review Boards, FDA and

confidence in the conduct of clinical research, and what happens after the FDA inspection. This 1 1/2-day workshop for the clinical research community targets sponsors, monitors, clinical investigators, institutional review boards and those who interact with them for the purpose of conducting FDA regulated clinical research. The workshop will include both industry and FDA perspectives on proper conduct of clinical trials regulated by FDA.

Date and Time: The public workshop is scheduled for Wednesday, April 21, 2004 from 8:30 a.m. to 4:45 p.m. and Thursday, April 22, 2004, from 8:45 a.m. to 12:30 p.m.

Location: The public workshop will be held at the Livonia, Michigan Holiday Inn, 17123 Laurel Park Dr. North, Livonia, MI 48152.

Contact: Nancy Bellamy, FDA, 300 River Pl., suite 5900, Detroit, MI 48207, 313–393–8143, FAX: 313–393–8139, e-mail *nbellamy@ora.fda.gov* or Marie Falcone, Industry and Small Business Representative, FDA, rm. 900 U.S. Customhouse, 200 Chestnut St., Philadelphia, PA 19106, 215–597–2120, ext. 4003, FAX: 215–597–5798, e-mail: *mfalcone@ora.fda.gov*.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) and $485 (member) or $560 (non-member) registration fee made payable to SoCRA, P.O. Box 101, Furlong, PA 18925. To register via the Internet go to *http://www.socra.org/FDA__Conference.htm*. FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.

Registrar will also accept payment by major credit cards. For more information on the meeting, or for questions on registration, contact 800-SoCRA92 (800–762–7292), or 215–345–7369 or via e-mail to *socramail@aol.com*. Attendees are responsible for their own accommodations. To make reservations at the Holiday Inn Livonia at the reduced conference rate, contact the Holiday Inn at 734–464–1300 or at hotel FAX: 734–464–1596 before March 23, 2004.

The registration fee will be used to offset the expenses of hosting the conference, including meals, refreshments, meeting rooms, and materials. Space is limited, therefore interested parties are encouraged to register early. Limited onsite registration may be available. Please arrive early to ensure prompt registration.

If you need special accommodations due to a disability, please contact Marie Falcone at least 7 days in advance of the workshop.

SUPPLEMENTARY INFORMATION: The ''FDA Clinical Trials Statutory and Regulatory Requirements'' workshop helps fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health by educating researchers on proper conduct of clinical trials. FDA has made education of the research community a high priority to assure the quality of clinical data and protect research subjects.

The workshop helps to implement the objectives of section 406 of the FDA Modernization Act (21 U.S.C. 393) and the FDA Plan for Statutory Compliance, which includes working more closely with stakeholders and ensuring access to needed scientific and technical expertise. The workshop also furthers the goals of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121) by providing outreach activities by Government agencies directed to small businesses.

Dated: March 5, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–5489 Filed 3–10–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; National Center for Complementary and Alternative Medicine Office of Communications and Public Liaison Communications Program Planning and Evaluation

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Center for Complementary and Alternative Medicine (NCCAM), the National Institutes of Health (NIH), will submit to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. A notice of this proposed information collection was previously published in the **Federal Register** on September 12, 2003, page 53743, and allowed 60 days for public comment. In response to the notice, NCCAM received one request to learn more about the overall evaluation plans. The purpose of this notice is to announce a final 30 days for public comment. NIH 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.

Proposed Collection

Title: NCCAM Office of Communications and Public Liaison Communications Programs Planning and Evaluation. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* NCCAM provides the public, patients, families, health care providers, complementary and alternative medicine (CAM) practitioners, and other with the latest scientifically based information on CAM and information about NCCAM's programs through a variety of channels. NCCAM requests permission to collect data from individuals and organizations in order to conduct (1) Formative research and (2) evaluation of activities, using both qualitative and quantitative methods. OCPL communications goals include raising awareness of issues unique to CAM so that consumers and health care providers can make better, more informed decisions, and establishing NCCAM as the source for credible, authoritative CAM information. The response data collected under this generic clearance will be used to improve communication activities through (1) Identifying key audiences, (2) developing program plans to meet the needs of diverse audiences, (3) developing messages and evaluating how well they resonate with intended audiences, and (4) evaluating how well communications program reach their intended audiences. *Frequency of Response:* Periodically or as needed. *Affected Public:* Individuals and households; nonprofit institutions; Federal government; State, local, or tribal government. *Type of Respondents:* Members of the public, health care professionals, representatives of organizations. The annual reporting burden is as follows. *Estimated Number of Respondents:* 2,440. *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* 0.29. *Estimated Annual Total Burden Hours Requested:* 713. There are no capital costs, operating costs, or maintenance costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the

methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) 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 Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Christy Thomsen, Director, Office of Communications and Public Liaison, NCCAM, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892–5475; or fax your request to 301–480–3519; or e-mail *thomsenc@mail.nih.gov.* Ms. Thomsen can be contacted by telephone at 301–451–8876.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: March 4, 2004.

Christy Thomsen,

Director, Office of Communications and Public Liaison, National Center for Complementary and Alternative Medicine, National Institutes of Health.

[FR Doc. 04–5505 Filed 3–10–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comments Request Improving Media Coverage of Cancer: A Survey of Science and Health Reporters

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI) of the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Improving Media Coverage of Cancer: A Survey of Science and Health Reporters. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The NCI is dedicated to improving the extent and quality of cancer coverage in all forms of new media. Towards this goal, the NCI would like to explore how health stories are currently being covered in print, television, and radio news coverage and would also like to understand the barriers that exist to better health and cancer coverage. Information from this research can be used to support the myriad of efforts and initiatives of the NCI as described in the Bypass Budget to ''understand and apply the most effective communications approaches to maximize access to and use of cancer information by all who need it.''

The primary objective of the NCI Media survey of reporters and editors covering health and medical science news stories in the U.S. is to gain knowledge of their background, environment, perspectives, and training needs in an effort to develop initiatives that will improve news media reportage of health in general, and cancer in particular. Six hundred reporters and editorial personnel of daily and weekly newspapers, magazines, wire service agencies, and television and radio stations with a specific focus on health and medical science reporting will be surveyed to determine their socio-demographic characteristics, individual characteristics, occupational practices, and other organizational and environmental factors that influence how they report health and medical science stories. This information will allow NCI to assess reporters' training needs, the barriers they face, and the resources NCI can develop to assist them in reporting cancer-related stories. *Frequency of Response:* Once. *Affected Public:* Individuals and businesses. *Type of Respondents:* Reporters and editors. The annual reporting burden is as follows: *Estimated Number of Respondents:* 600; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .334; and *Estimated Total Annual Burden Hours Requested:* 200. The total estimated cost to respondents is $3,784. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Reporters	600	1	.334	200
Total				200

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Helen I. Meissner, Ph.D., Chief, Applied Cancer Screening Research Branch, Behavioral Research Program, Division of Cancer Control and Population Sciences, National Cancer Institute, Executive Plaza North, Suite 4102, 6130 Executive Blvd., MSC 7331, Bethesda, MD 20892–7331, or call non-toll-free number 301–435–2836 or E-mail your request, including your address to: *meissneh@mail.nih.gov.*

Comments Due Date: 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: March 4, 2004.

Rachelle Ragland-Greene,

Project Clearance Liaison, National Cancer Institute, National Institutes of Health.

[FR Doc. 04–5542 Filed 3–10–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, April 6, 2004, 8 a.m. to April 7, 2004, 5 p.m., Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877 which was published in the **Federal Register** on January 30, 2004, 69 FR 4524.

The meeting is being amended due to change in meeting type from a regular meeting to a teleconference. The meeting is closed to the public.

Dated: March 5, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5532 Filed 3–10–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, March 10, 2004, 8 a.m. to March 11, 2204, 6 p.m., Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814 which was published in the **Federal Register** on February 25, 2004, 69 FR 8671–8672.

The meeting is being amended to correct the year from 2204 to 2004. The meeting is closed to the public.

Dated: March 5, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5538 Filed 3–10–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee D—Clinical Studies.

Date: April 13–14, 2004.

Time: 7 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: William D. Merritt, PhD, Scientific Review Administrator, Research Programs Review Branch, National Cancer Institute, Division of Extramural Activities, 6116 Executive Blvd., 8th Floor, Bethesda, MD 20892–8328, 301–496–9767, *wm63f@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 5, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5539 Filed 3–10–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclose of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee C—Basic & Preclinical.

Date: April 13–15, 2004.

Time: 7 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Michael B. Small, PhD, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8127, Bethesda, MD 20892, 301–402–0996, *smallm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394. Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93,399, Cancer Control, National Institutes of Health, HHS)

Dated: March 5, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5540 Filed 3–10–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clarly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 04–48, Review of R21s.

Date: March 25, 2004.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., room 4AN32E, Bethesda, MD 20892, (301) 451–5096.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: March 5, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5523 Filed 3–10–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Pilot and Feasibility Program in Human Islet Biology.

Date: April 19–20, 2004.

Time: 7:30 PM to 2:30 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8890, *federn@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Regulation of Type 1 Diabetes Mellitus.

Date: April 28, 2004.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *1s38z@nih.gov.*

Name of Committee: National Institutes of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Model Systems for Development of Pain Gene Therapy.

Date: April 30, 2004.

Time: 8 a.m. to 4 p.m..

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Maxine A. Lesniak, PHM, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Early Antipseudomonal Therapy in Cystic Fibrosis.

Date: May 3, 2004.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carolyn Miles, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *milesc@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Growth Differentiation and Disease of Unrothelium.

Date: May 5, 2004.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza; 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *1s38z@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 5, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5524 Filed 3–10–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Multicenter Trial of Combined CBT and Desipramine in FBD.

Date: March 29, 2004.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul A. Rushing, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Nutrition and HIV Inspection.

Date: April 1, 2004.
Time: 2 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Paul A Rushing, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Endoscopic Clinical Research in Pancreatic and Bilary Diseases.
Date: April 9, 2004.
Time: 1:30 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Training Conference.
Date: April 15, 2004.
Time: 10:30 a.m. to 12:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Michael W. Edwards, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; HIV Associated Nephropathy.
Date: April 23, 2004.
Time: 2 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *Is38z@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 5, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5525 Filed 3–10–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(b)(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel Research Integrity Review.
Date: March 8–9, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Marriott Coronado Island Resort, 2000 Second Street, Coronado, CA 92118.
Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, DHHS/NIH/NINDS/DER/SRB, 6001 Executive Boulevard MSC 9529, Neuroscience Center; Room 3203, Bethesda, MD 20892–9529, (301) 496–5388. *wiethorp@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 5, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5526 Filed 3–10–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel; Small Grant Program.
Date: April 15–16, 2004.
Time: April 15, 2004, 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Time: April 16, 2004, 8 a.m. to Adjournment.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Ali A. Azadegan, DVM, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, NIDCD, NIH, EPS–400C, 6120 Executive Blvd, MSC 7180, Bethesda, MD 20892–7180, (301) 496–8683, *azadegan@nih.gov.*

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel; Loan Repayment Program.
Date: April 30, 2004.
Time: 8:30 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).
Contact Person: Stanley C. Oaks, PhD, Scientific Review Administrator, Division of Extramural Activities, NIDCD, NIH, Executive Plaza South, Room 400C, 6120 Executive Blvd–MSC 7180, Bethesda, MD 20892–7180, (301) 496–8683, *so14s@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: March 5, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5531 Filed 3–10–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Translational Research Centers.

Date: March 19, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Benjamin Xu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6143, MSC 9608, Bethesda, MD 20892–9608, 301–443–1178, *benxu1@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 92.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 5, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5533 Filed 3–10–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Biomedical Research Review Subcommittee, AA–1 Biomedical Research Review Subcommittee.

Date: June 2–3, 2004.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–70003, (301) 443–2926, *skandasa@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Clinical and Treatment Subcommittee AA–3.

Date: July 15–16, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Mahadev Murthy, MBA, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, MSC 9304, Room 3037, Bethesda, MD 20892–9304, (301) 443–0800, *mmurthy@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: March 5, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5534 Filed 3–10–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of Fellowship Applications.

Date: March 29, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.

Contact Person: Dorita Sewell, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6000 Executive Boulevard, Suite 409, Bethesda, MD 20892, 301–443–2890, *dsewell@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Award for Scientists and Clinicians, 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: March 5, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5535 Filed 3–10–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Hypoxia in Development, Injury and Adaptation Mechanisms.

Date: April 2, 2004.

Time: 10:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg., Rm. 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 5, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5536 Filed 3–10–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Statistics and Measurement.

Date: March 18, 2004.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Mark Czarnolewski, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mczarnol@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Centers' Review.

Date: March 31, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Basic Neuroscience Conte Centers.

Date: April 1–2, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Suicide Prevention Centers.

Date: April 1, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 5, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5537 Filed 3–10–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Comprehensive International Program of Research on AIDS (CIPRA).

Date: March 26, 2004.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Robert C. Goldman, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 3124, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–8424, *rg159w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 4, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5541 Filed 3–10–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL LIBRARY OF MEDICINE, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Library of Medicine Board of Scientific Counselors, Lister Hill Center.

Date: May 13–14, 2004.

Open: May 13, 2004, 9 a.m. to 1 p.m.

Agenda: Review of research and development and preparation of reports of the Lister Hill Center for Biomedical Communication.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: May 13, 2004, 1 p.m. to 2 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Open: May 13, 2004, 2 p.m. to 5 p.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill Center for Biomedical Communication.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Open: May 14, 2004, 9 a.m. to 12 p.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communication.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Jackie Dule, Program Assistant, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Building 38A, Room 7N–707, Bethesda, MD 20892, (301) 496–4441.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 5, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5529 Filed 3–10–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the PubMed Central National Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: PubMed Central National Advisory Committee.

Date: May 10, 2004.

Time: 9:30 a.m. to 4 p.m.

Agenda: Review and Analysis of Systems.

Place: National Library of Medicine, Building 38, 2nd Floor Board Room, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: David J. Lipman, MD, Director, Natl Ctr for Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Bethesda, MD 20894.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by nongovernment employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.pubmedcentral.nih.gov/about/nac/html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 5, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5530 Filed 3–10–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ONC–J: Molecular Biology of Cancer.

Date: March 16, 2004.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6212, MSC 7804, Bethesda, MD 20892, (301) 435–1717, *padaratm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Prostate Consortium.

Date: March 17, 2004.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Call).

Contact Person: Mary Bell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7804, Bethesda, MD 20892, (301) 451–8754, *bellmar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Endocrinology, Reproductive, Nutritional and Metabolic Sciences.

Date: March 22, 2004.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call) .

Contact Person: Dennis Leszczynski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044, *leszczyd@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Clinical Neuroscience Member Conflict.

Date: March 22, 2004.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: David M. Armstrong, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 435–1253, *armstrda@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Skeletal Muscle Function/Dysfunction.

Date: March 23, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeffrey E. DeClue, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7814, Bethesda, MD 20892, (301) 594–6376.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vasculogenesis in Ewing's Sarcoma.

Date: March 24, 2004.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Bell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 6188, MSC 7804, Bethesda, MD 20892, (301) 451–8754, *bellmar@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Orthopedic Surgery Training Modules.

Date: March 25, 2004.

Time: 3 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeffrey E. DeClue, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7814, Bethesda, MD 20892, (301) 594–6376.

Name of Committee: AIDS and Related Research Integrated Review Group, NeuroAIDS and other End-organ Diseases Study Section.

Date: March 28–29, 2004.

Time: 12 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: La Fonda Hotel on the Plaza, 100 East San Francisco St, Santa Fe, NM 87501.

Contact Person: Abraham P. Bautista, MS, MSC, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bacterial Iron Transport.

Date: March 29, 2004.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Melody Mills, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3204, MSC 7808, Bethesda, MD 20892, (301) 435–0903.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Nursing Science Children and Families.

Date: March 30, 2004.

Time: 10 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gertrude K. McFarland, RN, FAAN, DNSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, (301) 435–1784, *mcfarlag@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 RES D (02): Member Conflict: Respiratory Sciences.

Date: March 30, 2004.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Everett E. Sinnett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, *sinnett@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BST A 30 I: High-End Instrumentation.

Date: March 31, 2004.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7826, Bethesda, MD 20892, (301) 435–1159, *ameros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chronic Fatigue Syndrome/Fibromyalgia Syndrome/Temporomandibular Dysfunction.

Date: March 31, 2004.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn, 824 New Hampshire Ave., NW, Washington, DC 20037.

Contact Person: J Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781, *th88q@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 RUSD (04) Calcitropic Hormones and Renal Transport.

Date: March 31, 2004.
Time: 1:30 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: M. Chris Langub, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7814, Bethesda, MD 20892, (301) 496–8551, *langubm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–D–05 Neuroendocrinology Related to Stress Feeding and Sexual Behavior.
Date: March 31, 2004.
Time: 2 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Gamil C. Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018, *debbasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–EMNR–H(02) Member Conflict MET.
Date: March 31, 2004.
Time: 2 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Reed A. Graves, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 402–6297, *gravesr@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 4, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5522 Filed 3–10–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Biochemical Sciences and Structural Biology.
Date: March 11, 2004.
Time: 5:30 p.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Churchill Hotel. 1914 Connecticut Avenue, NW., Washington, DC 20009
Contact Person: Janet Nelson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, 301–435–1723, *nelsonja@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel AIDS Pathogenesis.
Date: March 18, 2004.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 AARR–C 11: Small Business: HIV/AIDS Vaccines.
Date: March 18, 2004.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Bioengineering Research Partnerships.
Date: March 19, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.
Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7826, Bethesda, MD 20892, 301–435–1159, *ameros@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Statistical Methods for Longitudinal Studies.
Date: March 24, 2004.
Time: 12:15 p.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *hardyan@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Electroporation Gene Delivery.
Date: March 26, 2004.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Alec S. Liacouras, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 869–8266, *aliacouras@comcast.net.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Innate and Adaptive Immunity in AIDS.
Date: March 29, 2004.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Review of SBIR Applications.
Date: March 31, 2004.

Time: 12 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Mark P. Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Cardiovascular Sciences.
Date: April 1, 2004.
Time: 8:30 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.
Contact Person: Rajiv Kumar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892, 301–435–1212, *Kumarra@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel Zebrafish Par.
Date: April 1, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Alexandra M. Ainsztein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, 301–451–3848, *ainsztea@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel NAED Reviewer Conflict 1.
Date: April 1, 2004.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel SBIR-Pain.
Date: April 1, 2004.
Time: 2 p.m. to 5 p.m.
agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel OPOIDS.
Date: April 1, 2004.
Time: 12 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255, *kenshalod@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Endocrinology and Biology of Bone.
Date: April 1, 2004.
Time: 12 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: M. Chris Langub, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7814, Bethesda, MD 20892, 301–496–8551, *langubm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel AMCB Reviewer Conflicts.
Date: April 2, 2004.
Time: 11 a.m. to 12:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7852, Bethesda, MD 20892, 301–435–1168, *montalve@csr.nih.gov.*
(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 5, 2004.

LaVerne Y. Stirngfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5527 Filed 3–10–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Board of Governors of the Warren Grant Magnuson Clinical Center.
Date: March 29, 2004.
Time: 9 a.m. to 12 p.m.
Agenda: For discussion of planning, operational, and clinical research issues.
Place: National Institutes of Health, Building 10, 10 Center Drive, Room 2C116, Bethesda, MD 20892.
Contact Person: Maureen E. Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, (301) 496–2897.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.cc.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

Dated: March 5, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5528 Filed 3–10–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Aquatic Animal Health Inspection Requests

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service will submit the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. A description of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, or explanatory material, contact the Service Information Collection Officer at the address listed below.

DATES: Submit comments on or before May 10, 2004.

ADDRESSES: Send your comments on the requirement to Anissa Craghead,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203; (703) 358–2269 (fax); or *Anissa_Craghead@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information, or related forms, contact Anissa Craghead by phone at (703) 358–2445 or by e-mail at *Anissa_Craghead@fws.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested parties and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* CFR 1320.8(d)). The U.S. Fish and Wildlife Service (we, or the Service) plans to submit a request to OMB for approval of a collection of information related to fish health evaluations. We are requesting a 3-year term of approval for these collection activities.

Federal agencies 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 Fish and Wildlife Act of 1956 (16 U.S.C. 742f) requires the Department of the Interior to take steps ''required for the development, advancement, management, conservation, and protection of fishery resources.'' In addition, the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), the Wildlife Coordination Act (16 U.S.C. 661–666c), and the Anadromous Fish Conservation Act (16 U.S.C. 757a–757g) each authorize the Department of the Interior to enter into cooperative agreements with stakeholders to protect and conserve fishery resources.

Aquatic animal health data collected on both hatchery-raised and wild animals is essential to making good management decisions. The data allows Service and other managers and biologists to determine areas in the environment where aquatic animal pathogens pose a high risk to aquatic animal resources. The information is also used to develop alternative management techniques to help prevent the potential negative impacts of aquatic animal pathogens on animals reintroduced into the environment. Similarly, the determination of health status of wild populations and/or hatchery-raised populations is essential to determining appropriate stocking locations. Health inspections of aquatic animals, prior to movement to or from hatchery facilities, further allow Service managers and biologists to prevent the introduction of pathogenic organisms to areas free of such organisms, thereby helping to ensure the health and well-being of our aquatic animal resources.

We have conducted aquatic animal health inspections for over 25 years and wild fish health surveys for over 5 years. In order to effectively carry out these investigations, it is essential that we gather information on the animals being tested and the samples taken from that group of animals, which are tracked throughout the process. To gather this information, we have used a National Wild Fish Health Survey Submission form and an Aquatic Animal Health Inspection Request form. These forms are completed by our stakeholders and partners when submitting samples for aquatic animal health evaluations. These forms identify the source of the samples submitted and allow laboratory personnel to identify and track the samples and to provide accurate results. The forms that we use to collect this information were not approved by the Office of Management and Budget (OMB). We are initiating the process to request OMB approval of these forms through this publication and to request public comment on this information collection.

This collection helped, and would help, us gather information on the source and identity of samples submitted for aquatic animal health investigations. Optional data requested on the National Wild Fish Health Survey form can also be used to research the epidemiology of various health issues and improve managers' and biologists' ability to make informed decisions with regard to resource management as it relates to aquatic animal health. The information collection is voluntary; it is conducted only after an individual requests that the Service carry out an aquatic animal health investigation.

We used, and would use, two forms to collect this information. They are described below.

Title: National Wild Fish Health Survey—Submission Form.

OMB Control Number: 1018–xxxx.

Form number: 3–2277.

Frequency of Collection: On occasion, as requested by the submitting individual or entity.

Description of Respondents: State resource agencies, conservation groups, and other individuals seeking aquatic animal health investigations on samples obtained from the wild.

Total Annual Responses: Approximately 1,000 (estimate based on previous collection activities).

Total Annual Burden Hours: 250 hours. We estimate the reporting burden at fifteen minutes for each of the total 1,000 submissions, or approximately 250 hours total.

Title: Aquatic Animal Health Inspection Request.

OMB Control Number: 1018–xxxx.

Form number: 3–225.

Frequency of Collection: On occasion, as requested by the submitting individual or entity.

Description of Respondents: State resource agencies and other individuals seeking aquatic animal health investigations on samples obtained from captive animals.

Total Annual Responses: Approximately 25 (estimate based on previous collection activities).

Total Annual Burden Hours: 4 hours. We estimate the reporting burden at ten minutes for each of the total 25 submissions, or approximately 4 hours total.

We invite comments on this proposed information collection on the following: (1) Whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the 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 on respondents.

Dated: March 1, 2004.

Anissa Craghead,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 04–5449 Filed 3–10–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–1020–XX–028H; HAG 04–0116]

Meeting Notice for the John Day/Snake Resource Advisory Council

AGENCY: Bureau of Land Management (BLM), Vale District.

SUMMARY: The John Day/Snake Resource Advisory Council will meet on Thursday, April 22, 2004, at the Oxford Suites, 2400 SW Court Place, Pendleton, OR 97801, 8 a.m. to 4 p.m. (Pacific time).

The meeting may include such topics as, Wild Horse & Burro Program; Blue Mountain Revision Team; and Healthy

Forest Restoration Act. There will also be subcommittee updates on OHV, Planning and Sage Grouse and other matters as may reasonably come before the board.

The entire meeting is open to the public. For a copy of the information to be distributed to the Council members, please submit a written request to the Vale District Office 10 days prior to the meeting. Public comment is scheduled for 11 a.m. to 11:15 a.m., Pacific time (p.t.).

FOR FURTHER INFORMATION CONTACT: Additional information concerning the John Day/Snake Resource Advisory Council may be obtained from Peggy Diegan, Management Assistant/Webmaster, Vale District Office, 100 Oregon Street, Vale, OR 97918, (541) 473–3144, or e-mail *Peggy_Diegan@or.blm.gov.*

Dated: March 5, 2004.

David R. Henderson,

District Manager.

[FR Doc. 04–5443 Filed 3–10–04; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–027–1020–PN–020H; G–04–0117]

Notice To Cancel Date of a Public Meeting, Steens Mountain Advisory Council

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Cancel one day of public meeting for the Steens Mountain Advisory Council.

SUMMARY: The previously scheduled April 12 and 13, 2004, Steens Mountain Advisory Council Meeting (SMAC) to be held at the Bureau of Land Management (BLM), Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738, has been changed to occur only on April 13, 2004. The April 12, 2004 public meeting date has been cancelled. The original **Federal Register** notice announcing the meeting was published Tuesday, December 2, 2003, page number 67468.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the SMAC may be obtained from Rhonda Karges, Management Support Specialist, Burns District Office, 28910 Highway 20 West, Hines, Oregon, 97738, (541) 573–4400 or *Rhonda_Karges@or.blm.gov* or from the following Web site: *http://www.or.blm.gov/Steens.*

Dated: March 5, 2004.

Karla Bird,

Andrews Resource Area Field Manager.

[FR Doc. 04–5446 Filed 3–10–04; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act of 1980

Notice is hereby given that on February 27, 2004, a proposed consent decree (''decree'') in *United States* v. *Dan and Harriet Alexander, et al.,* Civil Action No. C02–5269RJB, was lodged with the United States District Court for the Western District of Washington.

In this action the United States sought recovery of response costs under section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9607, for costs incurred by the United States in connection with the Alexander Farms Superfund Site located in Grandview, Washington. Under the decree, defendants Dan and Harriet Alexander will reimburse the United States $3.55 million in past costs and receive a covenant not to sue for costs through October 31, 2003. Through the end of October 2003, the United States has expended approximately $4.0 million at the Site, inclusive of $543,000 in DOJ costs and $309,988 interest. The recovery of $3.55 million represents approximately 96% of past costs, exclusive of interest.

The Department of Justice (''DOJ'') will receive for a period of thirty (30) days from the date of this publication comments relating to the decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Dan and Harriet Alexander, et al.,* D.J. Ref. 90–11–2–07580.

The decree may be examined at the Office of the United States Attorney, Western District of Washington, 601 Union Street, 50100 Two Union Square, Seattle, Washington 98101–3903, and at U.S. EPA Region X, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101. During the public comment period, the decree may also be examined on the following DOJ Web site *http://www.usdoj.gov/enrd/open.html.* A copy of the decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $10.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Maher,

Assistant Chief, Environmental, Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–5420 Filed 3–10–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on February 23, 2004, a proposed Consent Decree in *United States* v. *Buckeye Egg Farm, L.P. et al.*, Civil Action No. 3:03 CV 7681, was lodged with the United States District Court for the Northern District of Ohio, which will resolve claims asserted against defendants Buckeye Egg Farm L.P. (''Buckeye''), its general partner Croton Farm, LLC (''Croton Farm''), and Anton Pohlmann, the sole member of Croton Farm and the 99% interest limited partner of Buckeye, in an Amended Complaint also filed on February 23, 2004. Buckeye is the nation's fourth largest egg producer.

In this action the United States seeks final penalties and injunctive relief against Defendants for their failure to comply with an EPA request for information and administrative order under sections 114 and 113 of the Clean Air Act, as well for violations of PSD regulations and the Ohio SIP at three Buckeye facilities in Croton, Marseilles, and Mount Victory, Ohio. The claims pertain to emissions from Buckeye's barns of particulate matter and ammonia. Preliminary air emission tests required by EPA indicate that air emissions of particulate matter (PM) from Buckeye's facilities are significant—over 550 tons/year (tpy) from the Croton facility, over 700 tpy from the Marseilles facility, and over 600 tpy from the Mt. Victory facility. Many scientific studies have linked particulate matter to aggravated asthma, coughing, difficult or painful breathing, chronic bronchitis and decreased lung function, among other ailments (*see http://www.epa.gov/air/urbanair/pm/index.html.*) Buckeye also reported ammonia emissions of over 800 tpy from its Croton facility, over 375 tpy

from the Marseilles facility, and nearly 275 tpy from the Mt. Victory facility. Ammonia is a lung irritant.

Under the proposed Consent Decree, Defendants will pay an $880,598 civil penalty and will spend over $1.6 million to install and test a system to capture particulate matter in each of its barns at the Marseilles and Mt. Victory facilities before it is vented to the outside. They will also use enzyme additive products on the manure accumulated in the layer barns to reduce ammonia emissions by at least 50 percent. Additional controls are required if dust or ammonia emissions are not satisfactorily reduced.

The Croton facility is required by the state of Ohio to install belt battery manure handling systems at its layer barns over the next five years. Because of this requirement, the Consent Decree requires alternative controls for the Croton facility. These include changes in bird variety and feed, which are expected to reduce both particulate matter and ammonia emissions. The Consent Decree requires extensive testing of these measures. If they are not successful, Buckeye will be required to install particulate impaction systems and other appropriate PM controls for the converted barns. The barns will also be treated with the enzyme product for ammonia control. The combination of particulate and ammonia controls at these facilities is also expected to reduce substantially fly infestations, which have been a subject of repeated state and private litigation against Buckeye.

While Buckeye recently sold its three facilities to Ohio Fresh Eggs LLC, the settlement requires Buckeye to bind the purchaser to implement the environmental improvements required under the Consent Decree. Buckeye remains liable for any violations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044, and should refer to *United States* v. *Buckeye Egg Farm, L.P. et al.*, D.J. Ref. 90–5–2–1–07262.

The Consent Decree may be examined at the Office of the United States Attorney, Northern District of Ohio, 4 Seagate, Suite 308, Toledo, Ohio 43604, or at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590. During the public comment period the proposed Consent Decree may also be examined on the following Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $17.75 (71 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–5421 Filed 3–10–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 28 U.S.C. 50.7 and section 122 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9622, notice is hereby given that on March 2, 2004, a proposed Consent Decree in the consolidated actions of *United States* v. *Marvin Mahan, et al.*, C.A. No. 00CV4953 (WHW) and *United States* v. *Transtech Industries, Inc.*, C.A. No. 01–5398 (WHW), was lodged with the United States District Court for the District of New Jersey.

In these consolidated actions in the United States, on behalf of the United States Department of the U.S. Environmental Protection Agency (''EPA''), seeks reimbursement of certain response costs incurred and to be incurred in connection with response actions at the Chemsol, Inc. Superfund Site, located in Piscataway, New Jersey (the ''Site''). The Complaints allege that defendants Marvin Mahan, Tang Realty, Inc., and Transtech Industries, Inc., are liable under section 107(a) of CERCLA, 42 U.S.C. 9607(a). Pursuant to the Consent Decree, the defendants will reimburse, on an ability to pay basis, the plaintiff United States for certain response costs incurred and to be incurred by the plaintiff in remediating the site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Marvin Mahan, et al.*, D.J. Ref. 90–11–3–06104/1&2.

The Consent Decree may be examined at the Office of the United States Attorney for the District of New Jersey, 970 Broad Street, Room 400, Newark, New Jersey 07102, and at the offices of EPA Region II,290 Broadway, New York, New York 10007. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $12.00 (25 cents per page reproduction cost), payable to the U.S. Treasury.

Robert Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–5418 Filed 3–10–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Proposed Settlement Agreement Under the Oil Pollution Act of 1990

Notice is hereby given that the United States Department of Justice, on behalf of the U.S. Department of Commerce, National Oceanic and Atmospheric Administration (''NOAA'') and the U.S. Department of the Interior, Fish and Wildlife Service (''DOI'') (hereinafter referred to together as the ''Settling Agencies'') have reached a settlement with Sociedad Naviera Ultragas Ltda. (''Sociedad'') regarding claims for injuries to natural resources arising from an oil spill that occurred in Chelsea Creek, East Boston, Massachusetts.

The Settling Agencies are acting in their capacities as designated natural resource trustees under the Oil Pollution Act of 1990, 33 U.S.C. 2701 *et seq.* to recover damages for natural resources, as authorized by 33 U.S.C. 2702(b)(2)(A). The oil spill occurred on June 8, 2000, when a tugboat collided with a vessel, spilling approximately 58,000 gallons of fuel oil into Chelsea Creek.

Pursuant to the Agreement, Sociedad will pay $42,136.00 to NOAA and $6,479.00 to DOI, as reimbursement for the Settling Agencies' damage assessment costs. In addition, Sociedad will pay $100,000 to fund the performance of two restoration projects.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the Settlement Agreement among NOAA, DOI, and Sociedad Naviera Ultragas Ltda, D.J. Ref. 90–5–1–1–07462.

The proposed Settlement Agreement may be examined at the Office of NOAA, Office of General Counsel, One Blackburn Drive, Suite 205, Gloucester, MA 01930. During the public comment period, the proposed Settlement Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the proposed Settlement Agreement may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, telephone confirmation number (202) 514–1547. If requesting a copy of the proposed Settlement Agreement please so note and enclose a check in the amount of $3.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–5419 Filed 3–10–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on February 10, 2004, pursuant to Section 6(a), of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Portland Cement Association (''PCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Keystone Cement Company, Exton, PA has been added as a Member. Dixon-Marquette has been acquired by CEMEX, a Member, and is no longer listed. Florida Rock Industries, Jacksonville, FL is no longer a Member. GCC Dacotah and GCC Rio Grande, El Paso, TX have changed their names to GCC of America, Inc. Lone Star Industries and RC Cement Co., Bethlehem, PA have changed their names to Buzzi Unicem USA Inc. North Texas Cement Company, Houston, TX has changed its name to Ash Grove Texas, L.P. The Affiliate Members, California Cement Promotion Council, Citrus Heights, CA and Cement and Concrete Pavement Council of Texas, Euless, TX have changed their names, respectively, to California Nevada Cement Production Council and Cement Council of Texas.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to Section 6(a) or the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on September 26, 2003. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 22, 2003 (68 FR 60416).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–5456 Filed 3–10–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Video-Enhanced Residential ADSL Broadband Technology

Notice is hereby given that, on February 17, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Video-Enhanced Residential ADSL Broadband Technology has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Sarnoff Corporation, Princeton, NJ; SBC Technology Resources, Inc., Austin, TX; Alcatel USA, Plano, TX; and Thomson, Inc., Princeton, NJ. The nature and objectives of the venture are to accelerate adoption of ADSL by creating technology that will allow telecom operators to deploy a broad range of video services (in addition to data) with functionality that will make these services a strong competitor to cable and satellite offerings. Cable and satellite presently offer viewers a selection of over 100 channels, including live events. The new ADSL services will offer subscribers a similar selection. The revenue from these entertainment services will help defray the cost of ADSL deployment and make other services economically viable on an incremental basis.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–5455 Filed 3–10–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated November 14, 2003 and published in the **Federal Register** on December 2, 2003, (68 FR 67473), Abbott Laboratories, 1776 North Centennial Drive, McPherson, Kansas 67460–1247, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Remifentanil (9739), a basic class of controlled substance listed in Schedule II.

The film plans to import the remifentanil to manufacture a controlled substance for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Abbott Laboratories to import the listed controlled substance is

consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Abbott Laboratories on a regular basis to ensure that the company's continued registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: March 3, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–5472 Filed 3–10–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

ANM Wholesale; Denial of Application

On February 28,2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to ANM Wholesale (ANM) proposing to deny its application executed on January 9, 2001, for DEA Certificate of Registration as a distributor of list I chemicals. The Order to Show Cause alleged that granting the application of ANM would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(h) and 824(a). The Order to Show Cause also notified ANM that should no request for a hearing be filed within 30 days, its hearing right would be deemed waived.

According to the DEA investigative file, the Order to Show Cause was sent by certified mail to ANM at its proposed registered location in Tampa, Florida and was received on March 15, 2003. DEA has not received a request for hearing or any other reply from ANM or anyone purporting to represent the company in this matter.

Therefore, the Acting Deputy Administrator of DEA, finding that (1) thirty days having passed since the delivery of the Order to Show Cause to the applicant's last known address, and (2) no request for a hearing having been received, concludes that ANM has waived its hearing right. *See* Aqui Enterprises, 67 FR 12576 (2002). After considering relevant material from the investigative file in this matter, the Acting Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1309.53(c) and (d) and 1316.67 (2003). The Acting Deputy Administrator finds as follows:

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are list I chemicals commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Phenylpropanolamine, also a list I chemical, is presently a legitimately manufactured and distributed product used to provide relief of the symptoms resulting from irritation of the sinus, nasal and upper respiratory tract tissues, and is also used for weight control. Phenylpropanolamine is also a precursor chemical used in the illicit manufacture of methamphetamine and amphetamine. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is an ongoing public health concern in the United States.

The Acting Deputy Administrator's review of the investigative file reveals that in or around early 2001, an application dated January 9, 2001, was received by DEA on behalf of ANM located in Tampa, Florida. The application was submitted on behalf of ANM by its owner, Mohamed A. Fawaz (Mr. Fawaz). ANM sought DEA registration as a distributor of the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. There is no evidence in the investigative file that ANM has sought to modify its pending application in any respect.

Following receipt of the above application, on April 25, 2001, DEA diversion investigators conducted an on-site pre-registration inspection at ANM's proposed registered location. The location requested by ANM for DEA registration was Mr. Fawaz's residence. Mr. Fawaz informed DEA investigators that since 2000, ANM's primary business was selling cigars, cigarettes and over-the-counter items to gas stations located throughout Hillsborough and Polk counties in Florida. These items were sold out of Mr. Fawaz's residence. During the inspection, investigators advised Mr. Fawaz of regulatory requirements and problems surrounding the diversion of list I chemicals. The investigators also reviewed security, recordkeeping and distribution procedures with Mr. Fawaz, and provided him with appropriate materials regarding DEA requirements for handlers of listed chemicals.

With regard to its anticipated sale of listed chemical products, Mr. Fawaz estimated that ANM's annual sales involving list I chemicals would be approximately 1% of the firm's total sales. Mr. Fawaz stated that ANM's customers were primarily located within a thirty mile area of Tampa, and he then provided DEA investigators with a list of twenty-seven customers who purchased cigars, cigarettes and over-the-counter items from ANM. The customer list was comprised primarily of gas stations and convenience stores. According to the investigative file, Mr. Fawaz further disclosed that he had no prior experience in the sale or marketing of over-the-counter medications that contain list I chemicals, and he was unfamiliar with the milligram strengths of the listed chemical products that he planned to sell.

A DEA investigator then inquired with the State of Florida, Planning and Growth Management/Permit and Zoning Department (the Zoning Department) for Hillsborough County to determine whether Mr. Fawaz's operation of a business at a residential location was in compliance with state zoning requirements. DEA was informed by a representative of the Zoning Department that Mr. Fawaz's residence was located in a ''Residential Area Only Zone'' and not in a ''Commercial Zone Area'' of Hillsborough County. Therefore, ANM was not in compliance with the zoning laws for Hillsborough County.

After receiving the above information, a DEA investigator advised Mr. Fawaz of the need to obtain zoning authorization for his business. DEA subsequently learned that Mr. Fawaz contacted the Zoning Department where he disclosed his plan to keep list I chemical products stored in his vehicle at an undisclosed location. The Zoning Department then informed Mr. Fawaz that he could apply for a rezoning permit for his place of residence; however Mr. Fawaz declined to submit the application.

DEA subsequently informed Mr. Fawaz that based on the latter's expressed plan to store listed chemical products in an automobile, it was unlikely that ANM's application for registration would be approved, since storage of such products in this manner would not be in compliance with DEA security and controlled premise requirements. Mr. Fawaz was further reminded of the Florida zoning requirements for his business. Mr. Fawaz then informed DEA investigators that he declined the opportunity to

apply for a rezoning permit because he did not think an application would be approved. He further expressed the desire not to relocate his business or his occupational license from his residence.

Pursuant to 21 U.S.C. 823(h), the Acting Deputy Administrator may deny an application for Certificate of Registration if she determines that granting the registration would be inconsistent with the public interest as determined under that section. Section 823(h) requires the following factors be considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Acting Deputy Administrator may rely on any one or combination of factors, and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See, e.g. Energy Outlet,* 64 FR 14269 (1999). *See also Henry J. Schwartz, Jr., M.D.,* 54 FR 16422 (1989).

The Acting Deputy Administrator finds factors one, two, four and five relevant to ANM's pending registration application.

With regard to factor one, maintenance of effective controls against diversion of listed chemicals into other than legitimate channels, the DEA pre-registration inspection documented inadequate security at the proposed registered location of ANM. Mr. Fawaz proposed initially to store listed chemical products at his residential location. However, when he discovered that his residential location did not comply with local zoning laws, Mr. Fawaz then proposed storing listed chemicals in a vehicle.

With regard to factor two, compliance with applicable Federal, State, and local law, the Acting Deputy Administrator notes that Florida state and county law requires zoning approval for the operation of a particular business in areas known as ''Commercial Zones.'' As of the date of DEA's inspection, the Zoning Department had not approved ANM for a permit because of the firm's location in a residential area. Mr. Fawaz does not own a zoning permit for his business, and at the time of DEA's investigation, he had no intention of obtaining one. The failure to obtain a proper zoning permit for business purposes has been cited under factor two as a basis for the denial of an application for DEA registration to distribute list I chemicals. *See, Daniel E. Epps, Jr.,* 67 FR 9987 (2002).

With respect to factor four, the applicant's past experience in the distribution of chemicals, the Acting Deputy Administrator finds this factor relevant to Mr. Fawaz's lack of experience in the handling of list I chemical products. In prior DEA decisions, the lack of experience in the handling list I chemicals was a factor in a determination to deny a pending application for DEA registration. *See, Matthew D. Graham,* 67 FR 10229 (2002); *Xtreme Enterprises, Inc.,* 67 FR 76195 (2002). Therefore, this factor similarly weighs against the granting of ANM's pending application. In addition, the Acting Deputy Administrator finds factor four relevant to Ms. Fawaz's apparent unfamiliarity with listed chemical products, as evidenced by his lack of knowledge regarding the milligram strengths of the listed chemical products that he planned to sell.

With respect to factor five, other factors relevant to and consistent with the public safety, the Acting Deputy Administrator finds this factor relevant to ANM's proposal to distribute listed chemical products primarily to convenience stores and gas stations. While there are no specific prohibitions under the Controlled Substance Act regarding the sale of listed chemical products to these entities, DEA has nevertheless found that gas stations and convenience stores constitute sources for the diversion of listed chemical products. *See, e.g.,* Sinbad Distributing, 67 FR 10232, 10233 (2002); K.V.M. Enterprises, 67 FR 70968 (2002) (denial of application based in part upon information developed by DEA that the applicant proposed to sell listed chemicals to gas stations, and the fact that these establishments in turn have sold listed chemical products to individuals engaged in the illicit manufacture of methamphetamine); Xtreme Enterprises, Inc., *supra.*

As noted above, there is no evidence in the investigative file that ANM ever sought to modify its pending application with respect to listed chemical products it seeks to distribute. Among the listed chemical products that the firm seeks to distribute is phenylpropanolamine. In light of this development, the Acting Deputy Administrator also finds factor five relevant to ANM's request to distribute phenylpropanolamine, and the apparent lack of safety associated with the use of that product. DEA has previously determined that an applicant's request to distribute phenylpropanolamine constitutes a ground under factor five for denial for an application for registration. Shani Distributors, 68 FR 62324 (2003). Based on the foregoing, the Acting Deputy Administrator concludes that granting the pending application of ANM would be inconsistent with the public interest.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application for DEA Certificate of Registration, previously submitted by ANM Wholesale be, and it hereby is, denied. This order is effective April 12, 2004.

Dated: February 20, 2004.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 04–5479 Filed 3–10–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated September 17, 2003, and published in the **Federal Register** on October 7, 2003, (68 FR 57928), Cayman Chemical Company, 1180 East Ellsworth Road, Ann Arbor, Michigan 48108, made application by renewal to the Drug Enforcement Administration for registration as a bulk manufacturer of the basic classes of controlled substances listed below.

Drug	Schedule
Marihauna (7360)	I
Tetrahydrocannabinols (7370)	I

The firm plans to manufacture small quantities of marijuana derivatives for research purpose.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Cayman Chemical Company to manufacture the listed controlled substance is consistent with

the public interest at this time. DEA has investigated Cayman Chemical Company to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed is granted.

Dated: March 3, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–5470 Filed 3–10–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated September 2, 2003, and published in the **Federal Register** on October 24, 2003, (68 FR 61013), Chemic Laboratories, Inc., 480 Neponset Street, Building 7C, Canton, Massachusetts 02021, made application by renewal to the Drug Enforcement Administration for registration as a bulk manufacturer of Cocaine (9041), a basic class of Schedule II controlled substance.

The firm plans to manufacture small quantities of cocaine derivative for distribution to a customer.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Chemic Laboratories, Inc., to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated Chemic Laboratories, Inc., to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Division Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed is granted.

Dated: March 3, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–5475 Filed 3–10–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Direct Wholesale Denial of Application

On February 25, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Direct Wholesale proposing to deny its application executed on July 27, 2001, for DEA Certificate of Registration as a distributor of list I chemicals. The Order to Show Cause alleged that granting the application of Direct Wholesale would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(h) and 824(a). The Order to Show Cause also notified Direct Wholesale that should no request for a hearing be filed within 30 days, its hearing right would be deemed waived.

According to the DEA investigative file, the Order to Show Cause was sent by certified mail to Direct Wholesale at its proposed registered location in Jacksonville, Florida and was received on March 7, 2003. DEA has not received a request for hearing or any other reply from Direct Wholesale or anyone purporting to represent the company in this matter.

Therefore, the Acting Deputy Administrator of DEA, finding that (1) thirty days having passed since the delivery of the Order to Show Cause to the applicant's last known address, and (2) no request for hearing having been received, concludes that Direct Wholesale has waived its hearing right. *See* Aqui Enterprises, 67 FR 12576 (2002). After considering relevant material from the investigative file in this matter, the Acting Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1309.53(c) and (d) and 1316.67 (2003). The Acting Deputy Administrator finds as follows:

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are list I chemicals used to illegally manufacture methamphetamine, a Schedule II controlled substance. Phenylpropanolamine, also a list I chemical, is presently a legitimately manufactured and distributed product used to provide relief of the symptoms resulting from irritation of the sinus, nasal and upper respiratory tract tissues, and is also used for weight control. Phenylpropanolamine is also a precursor chemical used in the illicit manufacture of methamphetamine and amphetamine. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is an ongoing public health concern in the United States.

The Acting Deputy Administrator's review of the investigative file reveals that DEA received an application dated July 27, 2001, from Direct Wholesale located in Jacksonville, Florida. The application was submitted on behalf of Direct Wholesale by its owner, Ronald Dean Petts (Mr. Petts). Direct Wholesale sought DEA registration as a distributor of the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. There is no evidence in the investigative file that Direct Wholesale has sought to modify its pending application in any respect.

Following receipt of the above application, on December 5, 2001, DEA diversion investigators conducted an on-site pre-registration inspection at Direct Wholesale's proposed registered location. Upon arrival, DEA investigators furnished and reviewed with Mr. Petts procedures for warning notices as they relate to various listed chemicals and procedures employed in the illicit manufacture of methamphetamine. DEA investigators also reviewed suspicious orders and recordkeeping procedures with Mr. Petts. In addition, Mr. Petts was furnished with a copy of the DEA Chemical Handler's Manual as well as relevant portions of the Methamphetamine Control Act.

DEA's investigation revealed that Direct Wholesale is a sole proprietorship, owned and operated by Mr. Petts. The firm is currently operated out of Mr. Petts' residence and has been in operation since March or April of 2001. Mr. Petts informed investigators that he sells cigars, lighters, and general merchandise. When asked by investigators why he was applying for registration to handle listed chemical products, Mr. Petts stated that many of his customers were expressing interest in buying these products from him.

DEA's investigation further revealed that aside from Mr. Petts, there are no

other employees of Direct Wholesale. Prior to opening his business, Mr. Petts sold food and clothing items, and he also operated a courier service. Mr. Petts informed DEA investigators that he has no prior experience with over-the-counter drug products, however, he estimated that the sale of list I chemical products would account for approximately five percent of his total sales. Mr. Petts further disclosed that he plans to sell cold and sinus products to convenience stores.

Mr. Petts was also asked by investigators to submit preliminary information regarding customers and suppliers of goods to Direct Wholesale. Mr. Petts supplied investigators the names of four listed chemical suppliers, as well as a list of thirty-four retail businesses. The customer list was comprised primarily of convenience stores. The customer list submitted by Mr. Petts was later compared to a customer list submitted by NTS, a separate firm that sought DEA registration to distribute listed chemical. The comparison showed that at least thirteen of NTS' customers were also listed as customers for Direct Wholesale. A DEA inspection of a customer list for a second retailer revealed at least nine entities that were also listed as customers of Direct Wholesale.

DEA's investigation further revealed that Direct Wholesale possesses a Florida occupational license for Mr. Petts' residence, and the firm is also registered with the Florida Department of Revenue to collect sales tax. However, according to Mr. Petts, his home is not zoned for business.

Pursuant to 21 U.S.C. 823(h), the Acting Deputy Administrator may deny an application for Certificate of Registration if she determines that granting the registration would be inconsistent with the public interest as determined under that section. Section 823(h) requires the following factors be considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Acting Deputy Administrator may rely on any one or combination of factors, and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See, e.g.* Energy Outlet, 64 FR 14269 (1999). *See also* Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

The Acting Deputy Administrator finds factors two, four and five relevant to Direct Wholesale's pending registration application.

With regard to factor two, compliance with applicable Federal, State, and local law, the Acting Deputy Administrator notes that Florida state and county law requires zoning approval for the operation of a particular business. Mr. Petts informed DEA investigators that Direct Wholesale was not zoned for business. The failure to obtain a proper zoning permit for business purposes has been cited under factor two as a basis for the denial of an application for DEA registration to distribute list I chemicals. *See* Daniel E. Epps, Jr., 67 FR 9987 (2002).

With respect to factor four, the applicant's past experience in the distribution of chemicals, the Acting Deputy Administrator finds this factor relevant to Mr. Petts' lack of experience in the handling of list I chemical products. In prior DEA decisions, the lack of experience in the handling list I chemicals was a factor in a determination to deny a pending application for DEA registration. *See,* Matthew D. Graham, 67 FR 10229 (2002); Xtreme Enterprises, Inc., 67 FR 76195 (2002). Therefore, this factor similarly weighs against the granting of Direct Wholesale's pending application.

With respect to factor five, other factors relevant to and consistent with the public safety, the Acting Deputy Administrator finds this factor relevant to Direct Wholesale's proposal to distribute listed chemical products primarily to convenience stores. While there are no specific prohibitions under the Controlled Substance Act regarding the sale of listed chemical products to these entities, DEA has nevertheless found that business establishments such as gas stations and convenience stores constitute sources for the diversion of listed chemical products. *See, e.g.,* Sinbad Distributing, 67 FR 10232, 10233 (2002); K.V.M. Enterprises, 67 FR 70968 (2002) (denial of application based in part upon information developed by DEA that the applicant proposed to sell listed chemicals to gas stations, and the fact that these establishments in turn have sold listed chemical products to individuals engaged in the illicit manufacture of methamphetamine); Xtreme Enterprises, Inc., supra.

Factor five is also relevant to Direct Wholesale's proposal to distribute to potential customers that are apparently purchasing list I chemical products from other suppliers. The Acting Deputy Administrator also finds curious the specific requests for listed chemical products by Direct Wholesale's customers. DEA has previously found similar conduct by potential customers relevant under factor five. *See* Shop It For Profit, 69 FR 1311, 1313 (2004).

As noted above, there is no evidence in the investigative file that Direct Wholesale ever sought to modify its pending application with regard to listed chemical products it seeks to distribute. Among the listed chemical products that the firm seeks to distribute is phenylpropanolamine. In light of this development, the Acting Deputy Administrator also finds factor five relevant to Direct Wholesale's request to distribute phenylpropanolamine, and the apparent lack of safety associated with the use of that product. DEA has previously determined that an applicant's request to distribute phenylpropanolamine constitutes a ground under factor five for denial of an application for registration. Shani Distributors, 68 FR 62324 (2003). Based on the foregoing, the Acting Deputy Administrator concludes that granting the pending application of Direct Wholesale would be inconsistent with the public interest.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application for DEA Certificate of Registration, previously submitted by Direct Wholesale be, and it hereby is, denied. This order is effective April 12, 2004.

Dated: February 20, 2004.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 04–5478 Filed 3–10–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Rory Patrick Doyle, M.D.; Revocation of Registration

On July 31, 2002, the then-Deputy Administrator of the Drug Enforcement Administration (DEA) issued a Notice of Immediate Suspension of Registration

and Order to Show Cause to Rory Patrick Doyle, M.D. (Dr. Doyle) of St. Petersburg, Florida. Dr. Doyle was notified of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BD0504200, as a practitioner, and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f) and 824(a) for reason that his continued registration would be inconsistent with the public interest. The order further notified Dr. Doyle that his DEA registration was immediately suspended as an imminent danger to the public health and safety pursuant to 21 U.S.C. 824(d).

The Order to Show Cause and Notice of Immediate Suspension alleged in relevant part, the following:

1. On May 13, 2002, the State of Florida, Department of Health (Department of Health) issued an Order of Emergency Suspension of Dr. Doyle's State medical license. The order was based on the following:

a. On July 20, 2000, the St. Petersburg Police Department arrested Dr. Doyle for committing lewd and lascivious acts on two minor females in 1994, 1995 and 2000. On July 25, 2000, Dr. Doyle was released from custody after posting $100,000 bail.

b. On August 11, 2000, the Assistant State Attorney in Florida filed an Information against Dr. Doyle in the Circuit Court of the Sixth Judicial Circuit for Pinellas County, Florida. In the Information, Dr. Doyle was charged with one count of first degree felony, lewd or lascivious molestation of a child less than twelve years of age, and two counts of second degree felony, handling and fondling of a child under the age of sixteen years of age.

c. Dr. Doyle's trial was scheduled for August 14, 2001, in the Circuit Court of the Sixth Judicial Circuit. Dr. Doyle failed to appear for the trial.

d. On November 6, 2001, the court issued a Writ of Capias for Dr. Doyle's arrest. Federal and state efforts to arrest him have been unsuccessful.

e. The Department of Health independently reviewed the allegations set forth in the Information. On May 6, 2002, two (2) Department of Health attorney's interviewed CP, a former patient, who verified the pertinent allegations set forth in the Information. CP further volunteered that Dr. Doyle molested her on at least four (4) occasions between 1994 and 1995. CP was between the ages of 13 and 14 at the time Dr. Doyle committed these acts. In 1994 and 1995, Dr. Doyle examined CP and issued prescriptions to her.

f. The Department of Health found that through Dr. Doyle's activities, he engaged in sexual misconduct with a patient. Accordingly, the Department of Health immediately suspended Dr. Doyle's state medical license, effective May 13, 2002.

2. On May 22, 2002, DEA investigators visited Dr. Doyle's registered location at in St. Petersburg, Florida, to request that he voluntarily surrender his DEA registration. Neither the receptionist nor Dr. Doyle's former medical colleague could identify his whereabouts.

According to the investigative file, the Notice of Suspension, Order to Show Cause was believed to have been left at Dr. Doyle's registered address on August 6, 2002, but because there was no written record of such, the order was redelivered to Dr. Doyle's registered address on January 21, 2003. More than thirty days have passed since the Notice of Suspension, Order to Show Cause was served upon Dr. Doyle. DEA has not received a request for hearing or any other reply from Dr. Doyle or anyone purporting to represent him in this matter.

Therefore, the Acting Deputy Administrator of DEA, finding that (1) thirty days having passed since the delivery of the Notice of Suspension, Order to Show Cause to Dr. Doyle, and (2) no request for hearing having been received, concludes that Dr. Doyle is deemed to have waived his hearing right. *See David W. Linder,* 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Acting Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Acting Deputy Administrator finds that Dr. Doyle is currently registered with DEA as a practitioner under DEA Registration, BD0504200, in Schedules II through V. That registration expires on June 30, 2004. A review of the investigative file reveals that on May 13, 2002, the Department of Health issued an Order of Emergency Suspension of License (Order of Suspension) summarily suspending Dr. Doyle's medical license in that state. In its Order of Suspension, the Department of Health found in relevant part that in 1994, 1995, and in 2000, Dr. Doyle committed improper acts with two minor females.

As recited in the Notice of Suspension, Order to Show Cause, Dr. Doyle's conduct resulted in his being charged with one count of first degree felony, lewd and lascivious molestation of a child less than twelve years of age in violation section 800.04(5), Florida Statutes, and two counts of second degree felony, handling and fondling of a child under the age of sixteen years in violation of section 800.04(1), Florida Statutes. These matters were corroborated by subsequent interviews by the Department of Health with the alleged victim. In addition, Dr. Doyle failed to appear for his August 14, 2001 criminal trial in the matter.

The investigative file contains no evidence that the Department of Health order suspending Dr. Doyle's medical license has been lifted, nor is there evidence before the Acting Deputy Administrator that Dr. Doyle's medical license has been reinstated. Therefore, the Acting Deputy Administrator finds that Dr. Doyle is not currently authorized to practice medicine in the State of Florida, and as a result, it is reasonable to infer that he is also without authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See James F. Graves, M.D.,* 67 FR 70968 (2002); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993); *Bobby Watts, M.D.,* 53 FR 11919 (1988). The agency has also maintained this standard in matters involving the immediate suspension of a DEA Certificate of Registration under 21 U.S.C. 824(d). *Chemical Dependence Associates of Houston,* 58 FR 37505 (July 12, 1993).

Here, it is clear that Dr. Doyle's medical license is currently suspended and therefore, he is not currently licensed to handle controlled substances in Florida, the State where he maintains a DEA controlled substance registration. Therefore, Dr. Doyle is not entitled to a DEA registration in that State. Because Dr. Doyle is not entitled to a DEA registration in Florida due to his lack of State authorization to handle controlled substances, the acting Deputy Administrator concludes that it is unnecessary to address whether his registration should be revoked based upon the other grounds asserted in the Notice of Suspension, Order to Show Cause. *See Fereida Walker-Graham, M.D.,* 68 FR 24761 (2003); *Nathaniel-Aikens-Afful, M.D.,* 62 FR 16871 (1997); *Sam F. Moore, D.V.M.,* 58 FR 14428 (1993).

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of

Registration, BD0504200, issued to Rory Patrick Doyle, M.D. be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective April 12, 2004.

Dated: February 20, 2004.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 04–5483 Filed 3–10–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

John A. Frenz, M.D.; Revocation of Registration

On June 4, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to John A. Frenz, M.D. (Dr. Frenz) of Brandon, Mississippi, notifying him of an opportunity to show cause as to why DEA should not revoke his Certificate of Registration No. AF6071752 under 21 U.S.C. 824(a) and deny any pending applications for renewal or modification of that registration. As a basis for revocation, the Order to Show Cause alleged Dr. Frenz voluntarily surrendered his medical license to the Mississippi State Board of Medical Licensure and is not currently authorized to practice medicine or handle controlled substances in Mississippi, his state of registration and practice. The order also notified Dr. Frenz that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Frenz at his address of record at 346 Crossgates Boulevard, Brandon, Mississippi 39047. According to the return receipt, on or around June 17, 2003, the Order was accepted on Dr. Frenz's behalf. The return receipt also indicated that Dr. Frenz's new address was 600 Bay Park Drive, Brandon, Mississippi 39047. DEA has not received a request for a hearing or any other reply from Dr. Frenz or anyone purporting to represent him in this matter.

Therefore, the Acting Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Frenz is deemed to have waived his hearing right. See Samuel S. Jackson, D.D.S., 67 FR 65145 (2002); David W. Linder, 67 FR 12579 (2002). After considering material from the investigative file, the Acting Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Acting Deputy Administrator finds that Dr. Frenz possesses DEA Certificate of Registration AF60771752, which expired on September 30, 2002. The Acting Deputy Administrator further finds that the Mississippi State Board of Medical Licensure (the Board) finds a Summons against Dr. Frenz alleging inter alia, that he was guilty of dishonorable or unethical conduct likely to deceive, defraud or harm the public and that he had voluntarily surrendered his hospital staff privileges while an investigation or disciplinary proceeding was being conducted against him. These counts arose from complaints filed by two of Dr. Frenz's patients alleging he engaged in sexual misconduct with them in his office and at the Rankin Medical Center of Brandon, Mississippi.

On February 13, 2002, Dr. Frenz waived his rights to a due process hearing and voluntarily and unconditionally executed a Voluntary Surrender of his Mississippi State Medical License No. 10906, to the Board. This Voluntary Surrender was accepted and approved by the Board on February 21, 2002.

The investigative file contains no evidence that the Voluntary Surrender of Dr. Frenz's medical license was stayed or that his license has been reinstated. Therefore, the Acting Deputy Administrator finds that Dr. Frenz is not currently authorized to practice medicine in the State of Mississippi. As a result, it is reasonable to infer he is also without authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Muttaiya Darmarajeh, M.D., 66 FR 52936 (2002); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear Dr. Frenz surrendered his medical license and is not licensed to handle controlled substances in Mississippi, where he is registered with DEA. Therefore, he is not entitled to a DEA registration in that state.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AF60771752, issued to John A. Frenz, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective April 12, 2004.

Dated: February 20, 2004.

Michele M. Leonhard,

Acting Deputy Administrator.

[FR Doc. 04–5482 Filed 3–10–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 7, 2003, and published in the **Federal Register** on October 29, 2003, (68 FR 61699), Gateway Specialty Chemical, Co., 4170 Industrial Drive, St. Peters, Missouri 63376, made application by renewal to the Drug Enforcement Administration for registration as a bulk manufacturer of Phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture the controlled substance for its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Gateway Specialty Chemical Co. to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated Gateway Specialty Chemical Co. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 C.F.R. 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed is granted.

Dated: March 3, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–5474 Filed 3–10–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Marvin L. Gibbs, Jr., M.D.; Revocation of Registration

On July 28, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Marvin L. Gibbs, Jr., M.D. (Dr. Gibbs) of Tempe, Arizona, notifying him of an opportunity to show cause as to why DEA should not revoke his Certificate of Registration No. AG7790644 under 21 U.S.C. 824(a)(4) and deny any pending applications for renewal or modification of his practitioner registration. As a basis for revocation, the Order to Show Cause alleged Dr. Gibbs' continued registration was inconsistent with the public interest. The Order alleged that from October 2000 through December 2001, Dr. Gibbs was affiliated with companies selling controlled substances and other drugs over the internet. During that period he issued thousands of controlled substance prescriptions, including refills, which were not issued in the normal course of professional practice, in violation of 21 CFR 1306.04 and 21 U.S.C. 841(a).

The Order alleged that without conducting physical examinations, Dr. Gibbs issued prescriptions to individuals requesting controlled substance prescriptions over internet web sites with which he had no prior doctor-patient relationship. Dr. Gibbs would review questionnaires completed on-line by the customer and then have a brief, pre-scheduled telephone conversation with the requestor. He did not consult with the customer's primary physician and failed to maintain any patient records of his own. The bulk of the controlled substance prescriptions issued by Dr. Gibbs in this manner were alleged to have been for hydrocodone 7.5 mg., a Schedule III controlled substance. It was further alleged Dr. Gibbs filed a prescription for Vicodin in the above manner which was requested by a DEA investigator using a fictitious name and medical complaint.

The order notified Dr. Gibbs that (1) he could file a written request for a hearing, (2) file a written waiver of hearing, together with a statement regarding his position on the matters of fact and law involved, or (3) if he failed to file a request for a hearing within 30 days, that his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Gibbs' registered location at 2078 E. Southern Avenue, Suite D101, Tempe, Arizona 85282–7521. According to the return receipt, the Order to Show Cause was accepted on Dr. Gibbs' behalf on or around August 8, 2003. On September 4, 2003, Dr. Gibbs filed a response with Administrative Law Judge Gail A. Randall which was ambiguous as to which option he was electing. After Judge Randall afforded him an opportunity to file a clear election, by his letter dated October 9, 2003, Dr. Gibbs selected option two, waiving his right to a hearing and asking that his October 1, 2003, written submission be considered.

On October 30, 2003, consistent with that election, Judge Randall terminated the case and returned the file to the Government's counsel for further administrative processing. On November 26, 2003, the Chief Counsel forwarded the file to the Acting Deputy Administrator for final agency action in accordance with 21 CFR 1301.43(e) and 1301.46.

Other than as set forth above, DEA has not received a request for a hearing from Dr. Gibbs or anyone representing him in this matter. Therefore, the Acting Deputy Administrator, finding that Dr. Gibbs has waived his hearing right and requested that the agency make its decision based on the investigative file and his written submission, now enters her final order without a hearing pursuant to 21 CFR 1301.43(c) and (e) and 1301.46.

The Acting Deputy Administrator finds that Dr. Gibbs is registered with DEA as a practitioner under Certificate AG7790644 for Schedule II through V controlled substances, with a registered location of Alliance Healthcare Services, 2078 E. Southern Avenue, Tempe, Arizona. He was previously registered with DEA under Certificate BG729030, which was retired on September 30, 1991. He is currently licensed with the Arizona Medical Board of Medical Examiners (Board) under License Number 13736, which was issued on November 26, 1982, and expires on December 21, 2004. He is currently engaged in a solo medical practice and his only specialty is obstetrics and gynecology.

In February 2001, Dr. Gibbs was identified as an integral participant in Myprivatedoc, an Internet business which had contracted with him to prescribe narcotics and other controlled substances to requesters after reviewing on-line questionnaires filled out by the customers and a brief telephone call. The prescriptions were then filled by Genrich Pharmacy of Phoenix, Arizona and sent to the customer's address by mail or delivery service.

A joint investigation conducted by DEA and the Board showed that in May or June 2000, Dr. Gibbs had been approached by two men about prescribing medicine over the Internet. They were owners of an auto parts business in Mesa, Arizona. At the time, Dr. Gibbs had recently lost his privileges at Mesa Lutheran Hospital, the facility where ninety percent of his patient volume was generated. Another physician, who recommended that Dr. Gibbs become involved in the Internet prescribing business, knew he needed help in generating income at the time.

Dr. Gibbs agreed to participate in Myprivatedoc's scheme and would be paid $20 for each consultation. Visitors to the Web site would initially fill out a questionnaire regarding their medical history and complaint. Dr. Gibbs then reviewed the forms over the Internet and received a schedule of when customers would be calling him for a consultation. Initially he evaluated 10 to 15 individuals per day, spending approximately five to ten minutes with each customer. By December 2000, his consultations had increased to approximately 30 per day.

Dr. Gibbs made no effort to validate information provided to him via the Internet and while Myprivatedoc requested that customers verify their identities with picture identifications, Dr. Gibbs made no independent verification of the caller's identity. Dr. Gibbs, who had not taken any courses or continuing medical education in chronic pain management or identification of drug seeking behavior, did not perform physical examinations on customers, request or obtain medical records from their treating physicians or maintain any medical records on the individuals he prescribed to over the Internet. The majority of prescriptions prescribed were for thirty day supplies of controlled substance medications, with a maximum of two refills. Dr. Gibbs stated he did not believe he was establishing a doctor-patient relationship with the individuals requesting prescriptions.

Around February 2001, after receiving approximately $52,000 in consultation fees, Dr. Gibbs terminated his relationship with Myprivatedoc. In April 2001, he associated with Medsworldwide, another internet

company located in Tampa, Florida. Using essentially the same evaluation process as with Myprivatedoc, Dr. Gibbs prescribed controlled substances to customers requesting them over Medsworldwide's web site. He was now paid $70.00 per consult and received approximately $36,000 before his relationship with that company was severed.

In August 2001, Dr. Gibbs started his own web site titled Expressmedcare.com. He associated with a Florida pharmacy which issued medications prescribed by Dr. Gibbs and began charging $100.00 to $125.00 per consult. Up until December 21, 2001, when DEA confiscated his computers and Dr. Gibbs stopped internet prescribing, he had consulted with approximately 900 customers through Expressmedcare's web site. As with Myprivatedoc and Medsworldwide, Dr. Gibbs prescribed controlled substances to Expressmedcare requestors after reviewing their questionnaires and a brief telephone conversation, but without physical examinations or entries in medical records.

Genrich Pharmacy records showed that from October 25, 2000, to August 28, 2001, Dr. Gibbs prescribed 8,040 controlled substance prescriptions, including refills, to approximately 2620 internet clients. This amounted to approximately 639,430 dosage units of controlled substances, including 560,650 dosage units of hydrocodone, 55,250 dosage units of benzodiazepines, 6,960 dosage units of controlled substances with the ingredient codeine and 16,570 dosage units of various other controlled substances. Additionally, Dr. Gibbs prescribed 56,460 dosage units of carisoprodol (Soma), which is not a controlled substance, but is frequently abused together with hydrocodone products.

In July 2001, a DEA investigator entered a fictitious name on the Medsworldwide web site seeking Vicodin ES, count 60, after purportedly suffering a back injury from an automobile accident. He was directed to phone Dr. Gibbs at a specific time on July 31, 2001. After minimal questioning as to when the accident occurred, if the caller was on any medications and what medication he wanted, Dr. Gibbs prescribed 60 Vicodin tablets with two refills. He did not question the agent about allergic reactions, his overall physical condition or any prior surgeries.

On September 15, 2001, at approximately 8 p.m., the 30 year-old son of the Aikin County, South Carolina, coroner was killed in a single car accident when he ran off the road and suffered fatal head injuries. He had talked to his mother about an hour before the accident, when he told her he was on his way home. The coroner's preliminary investigation indicated the victim most likely fell asleep or became unconscious at the wheel after taking alprazolam (Xanax), which was obtained through an Internet pharmacy. A prescription bottle for Xanax, issued by Genrich Pharmacy in Phoenix, Arizona, was found in the victim's car and documents reflected he received the medication through a prescription authorized by Dr. Gibbs.

On October 2, 2001, the Aikin County Coroner's Office contacted Dr. Gibbs by phone in his Arizona office. He advised investigators that the victim was not a patient of his because he was an OB/GYN physician. DEA investigators reviewing Dr. Gibbs' Physician Profile from Genrich Pharmacy then found he had prescribed the victim 1 mg aplrazolam (Xanax), 30 count, on March 3, 2001. Two 30 count refills were authorized by Dr. Gibbs and filled by Genrich Pharmacy on April 19, 2001 and June 5, 2001. Based on the circumstances of the accident and Dr. Gibbs having prescribing Xanax, the Coroner's Office believed it was very likely Dr. Gibbs contributed to the accident and the victim's subsequent death.

A review of seized computer files indicated that Dr. Gibbs also prescribed controlled substances to four health care professionals who were also obtaining controlled substances from other physicians associated with different internet websites.

Updated pharmacy records, including those obtained from United Prescription Services in Tampa, Florida, indicated that from October 2000 until December 2001, Dr. Gibbs was responsible for issuing a total estimated 14,500 controlled substance prescriptions and approximately 1200 carisoprodol prescriptions, including refills, over the internet. He prescribed in excess of 1,018,000 dosage units of controlled substances and 90,000 dosage units of carisoprodol during that period. It is estimated that over a fourteen month period Dr. Gibbs received in excess of $180,000 for prescribing controlled substances through the Myprivatedoc, Medsworldwide and Expressmedcare websites.

Based on the DEA and Arizona Medical Board's investigation, the Board initiated case No. MD–01–0861 against Dr. Gibbs. On May 14, 2003, after a formal interview with Dr. Gibbs in which he was represented by counsel, the Board issued its Findings of Fact, Conclusions of Law and Order. The Board found the standard of care for the management of prescribing medications requires there be a doctor-patient relationship, established on a face-to-face basis, before prescribing and that Dr. Gibb's conduct was unreasonable, given that standard of care. The Board found Dr. Gibbs' conduct posed the potential harm of patients becoming addicted to the medications and harm to the community through the diversion of those medications.

The Board concluded Dr. Gibbs' actions constituted unprofessional conduct as defined in A.R.S. § 32–1401 by failing or refusing to maintain adequate records on a patient, engaging in conduct or practice that is or might be harmful or dangerous to the health of the patient or the public and by prescribing prescription medication without a physical examination to persons whom he did not have a previously established a doctor-patient relationship.

The Board issued Dr. Gibbs a Decree of Censure, ordered him to pay a civil penalty of $10,000 within one year and placed him on ten years probation, which included the following provisions: He was to prescribe Schedule II and III controlled substances only for individuals who were established patients of his obstetrics and gynecology practice; attend CME classes; pay for costs associated with monitoring his probation; and submit quarterly declarations under penalty of perjury that he has complied with all conditions of probation.

In his written submission to the Order to Show Cause, Dr. Gibbs does not contest the allegations in the Order to Show Cause and concedes having prescribed controlled substances over the internet without taking patient's histories, conducting physical examinations or documenting information in medical records.

In defense, Dr. Gibbs notes he has been in practice for 23 years and never inappropriately prescribed controlled substances in his obstetrics and gynecology practice. He states he was unaware of any prohibitions against internet prescribing and became involved with ''2 local businessmen'' after they were referred to him by an anesthesiologist who Dr. Gibbs had known for 21 years. He states the ''2 businessman [SIC] told me they had retained legal counsel, and not knowing there were statutes governing the practice of medicine I did not do my own inquiries.'' Based on reading a text titled ''Practical Management of Pain,'' Dr. Gibbs states he took a ''naive approach'' to internet consulting and

did not consider the possibility of diversion or abuse in treating chronic pain patients. He states he believed people suffering chronic pain feared losing their jobs if they took time off from work to see physicians and that the internet process afforded them an opportunity to alleviate their pain and suffering.

Based on taking a medical ethics course ordered by the Board and a Physician Prescribing Course on his own volition, Dr. Gibbs states he now knows why it was wrong ''to address these issues over the internet.'' He stresses the state board did not revoke his medical license after conducting a 2½ hour interview and having him undergo a comprehensive proficiency evaluation in obstetrics and gynecology, general medicine, clinical pharmacology and medical ethics.

After taking a medical ethics course ordered by the Board, Dr. Gibbs states he now knows why prescribing over the internet is the ''wrong way to meet the needs of chronic pain sufferers'' and that ''Prior to taking the course, I was unaware of scams in which doctors in medical clinics and pharmacies (pharmacists) set up elaborate schemes to make large profits from selling and reselling the same prescription needs.'' Dr. Gibbs also states he did not consider the possibility that people would use the internet for the purpose of diversion and abuse of these medications and he ''can assure DEA that I am acutely aware, and understand why laws exist governing the practice of medicine.''

He also cites the assessment of Dr. Russell McIntyre, Th.D, director of a three day Professional Renewal Through Ethics course ordered by the Board, in which Dr. McIntyre concludes Dr. Gibbs now has unqualified capacity for ''ethical thinking and insight'' ''should be thought of as remediated.'' Dr. Gibbs further notes his voluntary completion of a three day Physician Prescribing Course at the University of California, San Diego School of Medicine in October 2003.

He finally stresses the Arizona Medical Board's reputation and credibility for protecting the public and assessing the worthiness of physicians in maintaining their state medical licenses after professional misconduct and that he cannot prescribe Schedule II and II controlled substances outside his obstetrics and gynecology practice under the terms of his ten year probation. Dr. Gibbs states that in his speciality, were DEA to revoke his certificate, it would not be possible for him to care for either surgical or non-surgical patients and that if he were allowed to retain his certificate, he would do nothing to jeopardize his medical license or warrant future revocation of his certificate.

The Acting Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications for such certificate if she determines the respondent's registration would be inconsistent with the public interest, as determined pursuant to 21 U.S.C. 823(a)(4) and 823(f). Section 823(f) requires consideration of the following factors:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

As a threshold matter, it should be noted that the factors specified in section 823(f) are to be considered in the disjunctive: The Acting Deputy Administrator may properly rely on any one or a combination of the factors, and give each factor the weight she deems appropriate, in determining whether a registration should be revoked or denied. Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989)

With regard to the first public interest factor, the Arizona Medical Board has not made a specific recommendation regarding this action. It has allowed Dr. Gibbs to retain his medical license and prescribe Schedule II and III controlled substances to established patients in the regular course of his obstetrics and gynecology practice. However, the Board also concluded he engaged in unprofessional conduct, issued him a Decree of Censure, ordered him to pay a civil penalty of $10,000 and placed him on ten years probation. Since state licensure is a necessary but insufficient condition for DEA registration, the Acting Deputy Administrator concludes that this factor is not determinative. See Barry H. Brooks, M.D., 66 FR 18305, 18308 (2001); Martha Hernandez, M.D., 62 FR 61145, 61147–48. Further, while it is relevant that the state currently allows Dr. Gibbs to prescribe Schedule II and III controlled substances to established patients, the Acting Deputy Administrator does not find that dispositive of whether his continued registration is in the public interest. See Roger Pharmacy, 61 FR 65079, 65080 (1996).

With regard to the second public interest factor, respondent's experience in dispensing controlled substances, the Acting Deputy Administrator finds Dr. Gibbs is an experienced obstetrician/gynecologist who has prescribed controlled substances for many years and there is no evidence that he violated state or federal regulations until October 2000. However, at that time, when financially pressed as a result of losing accreditation at the hospital where the bulk of his patient volume was being generated, he was quite willing to engage in internet prescribing with an organization run by two men who owned a local auto parts business. Dr. Gibbs, who had no experience or continuing medical education in chronic pain management or identification of drug seeking behavior, entered into this activity without even minimal research or inquiry into relevant professional standards, the state statutes governing unprofessional conduct, or any apparent thought to the threats of diversion and harm to individuals receiving controlled substance prescriptions under these circumstances.

Given the numerous red flags the business proposal should have generated and the Arizona statute (A.R.S. § 32–1401(26)(e)), which includes as ''unprofessional conduct'' the prescribing of medications without physical examination to an individual who does not have a previously established doctor-patient relationship, it is readily apparent that if Dr. Gibbs was, in fact, unaware of the constraints against this activity, it was because he simply turned a blind eye to the dangers and the standards of the normal course of professional practice. In that regard, his lengthy experience as a physician in prescribing controlled substances makes his voluntary participation in this scheme even more egregious.

In a little over a year, Dr. Gibbs prescribed over a million dosage units of controlled substance medications to thousands of internet requestors without a physical examination, adequate medical history, sufficient verification of identity or any documentation in patient medical records. Considering the foregoing, the Acting Deputy Administrator finds that factor two weighs against Dr. Gibbs' continued registration.

With regard to the third public interest factor, Dr. Gibbs has not been convicted of any Federal or State laws relating to the manufacture, distribution or dispensing of controlled substances, which weighs in favor of continued registration.

As to the fourth factor, compliance with State and Federal law and regulations, Dr. Gibbs violated Arizona law by (1) failing to conduct physical examinations before prescribing controlled substances, (2) failing to maintain adequate records on these patients and (3) engaging in conduct that is or might be harmful or dangerous to the health of the patient or the public. See A.R.S. § 32–1401(26)(e), (q) and (ss). Dr. Gibbs also violated Federal regulations by prescribing controlled substances outside the usual scope of his professional practice. See 21 CFR 1306.04(a). Accordingly, the Acting Deputy Administrator finds that factor four weighs against continued registration.

With regard to the fifth public interest factor, such other conduct which may threaten the public health and safety, the Acting Deputy Administrator finds the conduct of Dr. Gibbs discussed under factors two and four, is also applicable under factor five. The large amounts of controlled substance medications prescribed by Dr. Gibbs to individuals without physical examination or adequate consideration of the possibilities for diversion, abuse or adverse effects upon the recipients, all lead to the inevitable conclusion that his activities presented significant risk to public health and safety.

The Acting Deputy Administrator has considered the matters addressed in Dr. Gibbs' written submission but, in determining the weight to be attached to the matters of fact asserted therein, has done so in light of the absence of cross-examination. See 21 CFR 1301.43(d). While his efforts to educate himself regarding ethical and professional responsibilities and the dangers of internet prescribing are laudable, they are mitigated by the fact they were initiated only after Dr. Gibbs became aware of DEA and Board investigations into his conduct and taken in anticipation of or pursuant to state disciplinary proceedings.

The Acting Deputy Administrator is troubled by Dr. Gibbs' apparent continuing assertion that his underlying intent in engaging in internet prescribing was to care for patients who suffered from chronic pain and were unable financially to consult with a physician. This smacks of self-serving and rationalization. To the contrary, the record clearly infers that his prime motivation, from the beginning to the end, was financial gain. At a time when he had just lost accreditation at the hospital where ninety percent of his patient volume was being generated, he readily agreed to associate with two then-strangers who owned an auto parts business. After that relationship terminated, Dr. Gibbs affiliated himself with a second Internet Web site company, which increased his consultation fee from the $20 he had been receiving from Myprivatedoc, to $70 per consult with Medsworldwide. Even this increase was not sufficient, as Dr. Gibbs then formed his own Web site where, until his computers were seized by DEA, he charged $100 to $125 per consult. In sum, given the investigative record, Dr. Gibbs' assertion that his underlying motivation was to serve the public good and relieve pain and suffering, rings hollow.

After considering the totality of the investigative record and Dr. Gibbs' written submission, the Acting Deputy Administrator concludes his continued registration is inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AG7790644, issued to Marvin L. Gibbs, Jr., M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective April 12, 2004.

Dated: February 20, 2004.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 04–5484 Filed 3–10–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Stephen J. Graham, M.D. Revocation of Registration

On August 11, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Stephen J. Graham, M.D. (Dr. Graham) of Ketchum, Idaho, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BG0868971 under 21 U.S.C. 824(a) and deny any pending application for renewal or modification of that registration. As a basis for revocation, the Order to show Cause alleged that Dr. Graham is not currently authorized to practice medicine or handle controlled substances in Idaho, his state of registration and practice.

The Order to Show Cause further alleged that Dr. Graham's continued registration was inconsistent with the public interest as that term is used in 21 U.S.C. 823(f). This was based on Dr. Graham's employment by Prescibus, an internet company selling controlled substances and other drugs over the Internet. During the period Dr. Graham worked for Prescibus he issued at least four or five thousand prescriptions over the internet, the majority of which were for controlled substances and not issued in the usual course of professional medical practice. He was alleged to have issued controlled substance prescriptions to individuals with whom he did not have a prior doctor-patient relationship, failed to conduct physical examinations of those customers and did not create or maintain records on them. The only information usually reviewed prior to issuing prescriptions was a questionnaire completed by the customer. Dr. Graham would then have a brief telephone conversation with the customer and did not consult with the customer's primary care physician. Undercover investigators were alleged to have obtained controlled substances prescriptions from Dr. Graham under these circumstances on three occasions. The order notified Dr. Graham that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Graham at his address of record at 180 First Street West, No. 21, Ketchum, Idaho 83340 and to P.O. Box 83340, Ketchum, Idaho 83340–5860. According to the return receipts, the order was accepted on Dr. Graham's behalf on or around August 21 and August 22, 2003. DEA has not received a request for hearing or any other reply from Dr. Graham or anyone purporting to represent him in this matter.

Therefore, the Acting Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Graham is deemed to have waived his hearing right. *See* Samuel S. Jackson, D.D.S., 67 FR 65145 (2002); David W. Linder, 67 FR 12579 (2002). After considering material from the investigative file, the Acting Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Acting Deputy Administrator finds that Dr. Graham possesses DEA Certificate of Registration BG0868971. The Acting Deputy Administrator further finds that on or about May 27, 2003, the Idaho Board of Medicine

(Board) was scheduled to initiate a Formal Hearing into the internet prescribing practices of Dr. Graham, who held Idaho Medical License Number M7224 and Idaho Controlled Substances License Number CS7265. On June 6, 2003, in lieu of proceeding with the Formal Hearing, the Board and Dr. Graham entered into a Stipulation and Order in which Dr. Graham agreed to surrender his Idaho medical and controlled substance licenses and to not practice medicine or write prescriptions in Idaho for a minimum of five years.

The investigative file contains no evidence that the Stipulation and Order has been modified or lifted or that Dr. Graham's medical license has been reinstated or returned to him. Therefore, the Acting Deputy Administrator finds that Dr. Graham is not currently authorized to practice medicine in the State of Idaho. As a result, coupled with surrender of his controlled substances license, it is reasonable to infer he is also without authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* James F. Graves, M.D., 67 FR 70968 (2002); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D. 53 FR 11919 (1998).

Here, it is clear that Dr. Graham's medical license has been surrendered and he is currently not licensed to handle controlled substances in the State of Idaho, the state where he maintains a DEA controlled substance registration. Therefore, Dr. Graham is not entitled to a DEA registration in that state. Because Dr. Graham is not entitled to a DEA registration in Idaho due to his lack of state authorization to handle controlled substances, the Acting Deputy Administrator concludes it is unnecessary to address whether or not his DEA registration should be revoked based upon the public interest grounds asserted in the Order to Show Cause. *See* Samuel Silas Jackson, D.D.S., 67 FR 65145 (2002); Nathaniel-Aikins-Afful, M.D., 62 FR 16871 (1997); Sam F. Moore, D.V.M., 58 FR 14428 (1993).

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BG086971, issued to Stephen J. Graham, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective April 12, 2004.

Dated: February 20, 2004.

Michele M. Leonhart,

Acting Deputy Administratorr.

[FR Doc. 04–5480 Filed 3–10–04; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 7, 2003, and published in the **Federal Register** on October 29, 2003, (68 FR 61699), ISP Freetown Fine Chemicals, Inc., 238 South Main Street, Freetown, Massachusetts, made application by renewal to the Drug Enforcement Administration for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396).	I
Amphetamine (1100)	II
Phenylacetone (8501)	II

The firm plans to bulk manufacture the phenylacetone for manufacture of the amphetamine. The bulk, 2,5-dimethoxyamphetamine will be used for conversion into non-controlled substances.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of ISP Freetown Fine Chemicals, Inc. to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated ISP Freetown Fine Chemicals, Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed is granted.

Dated: March 3, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–5471 Filed 3–10–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated September 17, 2003, and published in the **Federal Register** on October 7, 2003, (68 FR 57929), National Center for Natural Products Research—NIDA MProject, University of Mississippi, 135 Coy Waller Complex, University, Mississippi 38677, made application by renewal to the Drug Enforcement Administration for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I

The firm plans to cultivate marijuana for the National Institute of Drug Abuse for research approved by the Department of Health and Human Services.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of National Center for Natural Products Research—NIDA MProject to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated National Center for Natural Products Research—NIDA MProject to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed is granted.

Dated: March 3, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–5473 Filed 3–10–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

James W. Phillips, M.D. Revocation of Registration

On June 25, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to James W. Phillips, M.D. (Dr. Phillips) of Jacksonville, Florida, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BP1163396 under 21 U.S.C. 824(a) and deny any pending applications for renewal or modification of that registration. As a basis for revocation, the Order to Show Cause alleged that Dr. Phillips is not currently authorized to practice medicine or handle controlled substances in Florida, his state of registration and practice. The order also notified Dr. Phillips that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Phillips at his address of record at 404 Cancun Court, Jacksonville, Florida. According to the return receipt, on or around July 8, 2003, the Order was accepted on Dr. Phillips' behalf. The return receipt also indicated that Dr. Phillips' new address was 760 Tee Time Lane, Jacksonville, Florida. DEA has not received a request for hearing or any other reply from Dr. Phillips or anyone purporting to represent him in this matter.

Therefore, the Acting Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Phillips is deemed to have waived his hearing right. See Samuel S. Jackson, D.D.S., 67 FR 65145 (2002); David W. Linder, 67 FR 12579 (2002). After considering material from the investigative file, the Acting Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Acting Deputy Administrator finds that Dr. Phillips possesses DEA Certificate of Registration BP1163396, which expires on March 31, 2005. The Acting Deputy Administrator further finds that the State of Florida Department of Public Health filed an Administrative Complaint with the State of Florida Medical Board (the Board) against Dr. Phillips alleging inter alia, that he engaged in malpractice with three plastic surgery patients, failed to submit necessary paperwork with the insurance company of a fourth patient, filed for bankruptcy and closed his office without notifying his patients or the Board, and that he failed to respond to his patients' requests for their medical records.

On December 18, 2002, Dr. Phillips defaulted his right to a hearing on the Administrative Complaint and the Board issued its Final Order sustaining the accusations and revoking Dr. Phillips' license to practice medicine in the State of Florida, effective as of December 23, 2002. The investigative file contains no evidence that the Board's Final Order has been stayed or that Dr. Phillips' medical license has been reinstated. Therefore, the Acting Deputy Administrator finds that Dr. Phillips is not currently authorized to practice medicine in the State of Florida. As a result, it is reasonable to infer he is also without authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Muttaiya Darmarajeh, M.D., 66 Fr 52936 (2001); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that Dr. Phillips' medical license has been revoked and he is not licensed to handle controlled substances in Florida, where he is registered with DEA. Therefore, he is not entitled to a DEA registration in that state.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BP1163396, issued to John W. Phillips, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective April 12, 2004.

Dated: February 20, 2004.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 04–5481 Filed 3–10–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated November 4, 2003 and published in the **Federal Register** on December 2, 2003, (68 FR 67480), Stepan Company, Natural Products Dept., 100 W. Hunter Avenue, Maywood, New Jersey, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Coca Leaves (9040), a basic class of controlled substance listed in Schedule II.

The firm plans to import the coca leaves to manufacture bulk controlled substances.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Stepan Company to import the listed controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Stepan Company on a regular basis to ensure that the company's continued registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: March 3, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–5476 Filed 3–10–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated April 3, 2003 and published in the **Federal Register** on April 15, 2003, (68 FR 18262), Tocris Cookson, Inc., 16144 Westwoods Business Park, Ellisville, Missouri 63021–4500, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of Tetrahydrocannabinols (7370), a basic class of controlled substance.

Small quantities of the products will be imported for research purposes.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Tocris Cookson, Inc. to import the listed controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Tocris Cookson, Inc. to ensure that the company's registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: March 3, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–5477 Filed 3–10–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act; Native American Employment and Training Council

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended, and section 166(h)(4) of the Workforce Investment Act (WIA) [29 U.S.C. 2911(h)(4)], notice is hereby given of the next meeting of the Native American Employment and Training Council as constituted under WIA.

Time and Date: The meeting will begin at 9 a.m. EST (Eastern Standard Time) on Thursday, March 25, 2004, and continue until 5 p.m. EST that day. The meeting will reconvene at 9 a.m. EST on Friday, March 26, 2004, and continue until approximately 3 p.m. EST on that day. The period from 3 p.m. to 5 p.m. EST on March 25 will be reserved for participation and presentation by members of the public. The meeting will reconvene on Friday, March 26, 2004, and adjourn at approximately 3 p.m. EST on that day.

Place: All sessions will be held at the Grand Hyatt Washington Center, Constitution Room (D, E, & F), 1000 H Street, NW., Washington, DC 20001.

Status: The meeting will be open to the public. Persons who need special accommodations should contact Ms. Brown on (202) 693–3737 by March 20, 2004.

Matters To Be Considered: The formal agenda will focus on the following topics: (1) Designation of WIA section 166 grantees for Program Years 2004–2005; (2) implementation of 2000 Decennial Census data in the section 166 funding formula(s); (3) other Council workgroup reports, especially the reports and performance standards workgroup; (4) status of the Council report to the Department and Congress; (5) status of the Technical Assistance and Training Initiative, including plans for future support of poor performing grantees; and, time permitting, (6) status of Welfare Reform and WIA reauthorization legislation.

FOR FURTHER INFORMATION CONTACT: Ms. Athena Brown, Acting Chief, Division of Indian and Native American Programs, Office of National Programs, Employment and Training Administration, U.S. Department of Labor, Room S–4203, 200 Constitution Avenue, NW., Washington, DC 20210.

Telelphone: (202) 693–3737 (VOICE) (this is not a toll-free number) or 1–800–877–8339 (TTY) or speech-to-speech at 1–877–877–8982 (these are toll-free numbers).

Signed at Washington, DC, this 4th day of March, 2004.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 04–5439 Filed 3–10–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0150 (2004)]

Control of Hazardous Energy (Lockout/Tagout) Standard; Extension of the Office of Management and Budget's Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits comments concerning its proposal to extend OMB approval of the information-collection requirements contained in the Control of Hazardous Energy (Lockout/Tagout) Standard (29 CFR 1910.147). The Standard regulates control of hazardous energy using lockout or tagout procedures while employees service, maintain, or repair machines or equipment when activation, start up, or release of energy from an energy source is possible.

DATES: Comments must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or received) by May 10, 2004.

Facsimile and electronic transmission: Your comments must be received by May 10, 2004.

ADDRESSES:

I. Submission of Comments

Regular mail, express delivery, hand delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Docket No. ICR 1218–0150(2004), Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., e.s.t.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this document, Docket Number ICR 1218–0150(2004), in your comments.

Electronic: You may submit comments, but not attachments, through

the Internet at *http://ecomments.osha.gov/.*

II. Obtaining Copies of the Supporting Statement for the Information Collection Request

The Supporting Statement for the Information Collection Request is available for downloading from OSHA's Web site at *http://www.osha.gov.* The Supporting Statement is available for inspection and copying in the OSHA Docket Office at the address listed above. A printed copy of the Supporting Statement can be obtained by contacting Theda Kenney at (202) 693–2222.

FOR FURTHER INFORMATION CONTACT: Todd Owen or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA Web page. Please note you cannot attach materials such as studies or journal articles to electronic comments. When you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems, a significant delay may occur in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

II. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimized, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct. The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The Standard specifies several paperwork requirements. The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of these requirements is to control the release of hazardous energy while employees service, maintain, or repair machines or equipment when activation, start up, or release of energy from an energy source is possible; proper control of hazardous energy prevents death and serious injury among these employees.

Energy-Control Procedure (paragraph (c)(4)(i)). With limited exception, employers must document the procedures used to isolate from its energy source, and render inoperative, any machine or equipment prior to servicing, maintenance, or repair by employees. These procedures are necessary when activation, start up, or release of stored energy from the energy source is possible, and such release could cause injury to the employees.

Paragraph (c)(4)(ii) states that the required documentation must clearly and specifically outline the scope, purpose, authorization, rules, and techniques employees are to use to control hazardous energy, and the means to enforce compliance. The document must include at least the following elements: A specific statement regarding the use of the procedure; detailed procedural steps for shutting down, isolating, blocking, and securing machines or equipment to control hazardous energy, and for placing, removing, and transferring lockout or tagout devices, including the responsibility for doing so; and requirements for testing a machine or equipment to determine and verify the effectiveness of lockout or tagout devices, as well as other energy-control measures.

The employer uses the information in this document as the basis for informing and training employees about the purpose and function of the energy-control procedures, and the safe application, use, and removal of energy controls. In addition, this information enables employers to effectively identify operations and processes in the workplace that require energy-control procedures.

Periodic Inspection (c)(6)(ii). Under paragraph (c)(6)(i), employers are to conduct inspections of energy-control procedures at least annually. An authorized employee (other than an authorized employee using the energy-control procedure that is the subject of the inspection) is to conduct the inspection and correct any deviations or inadequacies identified. For procedures involving either lockout or tagout, the inspection must include a review, between the inspector and each authorized employee, of that employee's responsibilities under the procedure; for procedures using tagout systems, the review also involves affected employees, and includes an assessment of the employees' knowledge of the training elements required for these systems. Paragraph (c)(6)(ii) requires employers to certify the inspection by documenting the date of the inspection, and identifying the machine or equipment and the employee who performed the inspection.

Training and Communication (c)(7)(iv). Paragraph (c)(7)(i) specifies that employers must establish a training program that enables employees to understand the purpose and function of the energy-control procedures, and provides them with the knowledge and skills necessary for the safe application, use, and removal of energy controls. According to paragraph (c)(7)(ii), employers are to ensure that: Authorized employees recognize the applicable hazardous-energy sources, the type and magnitude of the energy available in the workplace, and the methods and means necessary for energy isolation and control; affected employees obtain instruction in the purpose and use of the energy-control procedure; and other employees who work, or may work, near operations using the energy-control procedure receive training about the procedure, as well as the prohibition regarding attempts to restart or reactivate machines or equipment having locks or tags to control energy release.

When the employer uses a tagout system, the training program must inform employees that: Tags are warning labels affixed to energy-isolating devices, and therefore do not provide the physical restraint on those devices that locks do; they are not to remove tags attached to an energy-isolating devices unless permitted to do so by the authorized employee responsible for the tag, and they are never to bypass, ignore, or in any manner defeat the tagout system; tags must be legible and understandable by authorized and affected employees, as well as other employees who work, or may work, near operations using the energy-control procedure; the materials

used for tags, including the means of attaching them, must withstand the environmental conditions encountered in the workplace; tag evoke a false sense of security, and employees must understand that tags are only part of the overall energy-control program; and they must attach tags securely to energy-isolating devices to prevent removal of the tags during use.

Paragraph (c)(7)(iii) states that employers must retrain authorized and affected employees when a change occurs in: Their job assignments, the machines, equipment, or processes such that a new hazard is present; and the energy-control procedures. Employers also must provide retaining when they have reason to believe, or periodic inspection required under paragraph (c)(6) indicates, that deviations and inadequacies exist in an employee's knowledge or use of energy-control procedures. The retraining must reestablish employee proficiency and, if necessary, introduce new or revised energy-control procedures.

Under paragraph (c)(7)(iv), employers are to certify that employees completed the required training, and that this training is up-to-date. The certification is to contain each employee's name and the training date.

Training employees to recognize hazardous-energy sources and to understand the purpose and function of the energy-control procedures, and providing them with the knowledge and skills necessary to implement safe application, use, and removal of energy controls, enables them to prevent serious accidents by using appropriate control procedures in a safe manner to isolate these hazards. In addition, written certification of the training assures the employer that employees receive the training specified by the Standard, at the required frequencies.

Notification of Employees (paragraph (c)(9)). This provision requires the employer to notify affected employees prior to applying, and after removing, a lockout or tagout device from a machine or equipment. Such notification informs employees of the impending interruption of the normal production operation, and serves as a reminder of the restrictions imposed on them by the energy-control program. In addition, this requirement ensures that employees do not attempt to reactivate a machine or piece of equipment after an authorized employee isolates its energy source and renders it inoperative. Notifying employees after removing an energy-control device alerts them that the machines and equipment are no longer safe for servicing, maintenance, and repair.[1]

Outside Personnel (Contractors, etc.) (paragraph (f)(2)(i)). When the onsite employer uses an offsite employer (*e.g.,* a contractor) to perform the activities covered by the scope and application of the Standard, the two employers must inform each other regarding their respective lockout or tagout procedures. This provision ensures that onsite employers know about the unique energy-control procedures used by an offsite employer; this knowledge prevents any misunderstanding regarding the implementation of lockout or tagout procedures, including the use of lockout or tagout devices for a particular application.

Disclosure of Inspection and Training Certification Records (paragraphs (c)(6)(ii) and (c)(7)). The inspection records provide employers with assurance that employees can safely and effectively service, maintain, and repair machines and equipment covered by the Standard. These records also provide the most efficient means for an OSHA compliance officer to determine that an employer is complying with the Standard, and that the machines and equipment are safe for servicing, maintenance, and repair. The training records provide the most efficient means for an OSHA compliance officer to determine whether an employer has performed the required training at the necessary and appropriate frequencies.

III. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and transmission techniques.

IV. Proposed Actions

OSHA is proposing to extend the information collection requirements in the Control of Hazardous Energy (Lockout/Tagout) Standard (29 CFR 1910.147). The Agency will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Standard * * *

Type of Review: Extension of a currently approved information-collection requirement.

Title: The Control of Hazardous Energy (Lockout/Tagout) (29 CFR 1910.147).

OMB Number: 1218–0150.

Affected Public: Business or other for-profit; not-for-profit institutions; State, local or tribal government; Federal government.

Number of Respondents: 818,532.

Frequency of Recordkeeping: Initially; annually, on occasion.

Average Time per Response: Varies from 15 seconds (.004 hour) for an employer or authorized employee to notify affected employees prior to applying, and after removing, a lockout/tagout device from a machine or equipment to 80 hours for certain employers to develop energy-control procedures.

Total Annual Hours Requested: 3,421,527.

V. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed in Washington, DC on March 5, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–5485 Filed 3–10–04; 8:45 am]

BILLING CODE 4510–26–M

[1] Paragraph (e)(2) requires similar notification; because of this similarity, the Agency is taking no burden hours or cost for this provision.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

March 1, 2004.

TIME AND DATE: 10 a.m., Thursday, March 11, 2004.

PLACE: Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session:

Secretary of Labor v. *Rag Cumberland Resources LP,* Docket Nos. PENN 2000–

181–R et al. (Issues include whether the judge correctly determined that the operator violated 30 CFR §§ 75.334(b) and 75.363(a).)

The Commission heard oral argument in this matter on February 26, 2004.

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

FOR FURTHER INFORMATION CONTACT: Jean Ellen, (202) 434–9950/(202) 708–9300 for TDD Relay / 1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 04–5584 Filed 3–8–04; 4:15 pm]

BILLING CODE 6735–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before April 12, 2004, to be assured of consideration.

ADDRESSES: Comments should be electronically mailed to: *Jonathan_P._womer@omb.eop.gov* or faxed to 202–395–5806, Attn: Mr. Jonathan Womer, Desk Officer for NARA.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on December 29, 2003 (68 FR 74985–74986). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Microfilm Publication Order Form.

OMB number: 3095–0046.

Agency form number: NATF Form 36.

Type of review: Regular.

Affected public: Business or for-profit, nonprofit organizations and institutions, Federal, State and local government agencies, and individuals or households.

Estimated number of respondents: 5,200.

Estimated time per response: 10 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 867 hours.

Abstract: The information collection is prescribed by 36 CFR 1254.72. The collection is prepared by researchers who cannot visit the appropriate NARA research room or who request copies of records as a result of visiting a research room. NARA offers limited provisions to obtain copies of records by mail and requires requests to be made on prescribed forms for certain bodies of records. The National Archives Trust Fund (NATF) Form 36 (11/03), Microfilm Publication Order Form, is used by customers/researchers for ordering a roll, rolls, or a microfiche of a microfilm publication.

Dated: May 4, 2004.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 04–5486 Filed 3–10–04; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection used by customers/researchers for ordering reproductions of NARA's motion picture, audio, and video holdings that are housed in the Washington, DC area of the National Archives and Records Administration. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before May 10, 2004, to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–837–3213; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments

concerning the following information collection:

Title: Item Approval Request List.

OMB number: 3095–0025.

Agency form number: NA Form 14110 and 14110A.

Type of review: Regular.

Affected public: Business or for-profit, nonprofit organizations and institutions, Federal, State and local government agencies, and individuals or households.

Estimated number of respondents: 2,816.

Estimated time per response: 15 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 704 hours.

Abstract: The information collection is prescribed by 36 CFR 1254.72. The collection is prepared by researchers who cannot visit the appropriate NARA research room or who request copies of records as a result of visiting a research room. NARA offers limited provisions to obtain copies of records by mail and requires requests to be made on prescribed forms for certain bodies of records. NARA uses the Item Approval Request List form to track reproduction requests and to provide information for customers and vendors.

Dated: March 4, 2004.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 04–5487 Filed 3–10–04; 8:45 am]

BILLING CODE 7515–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meeting

TIME AND DATE: 2 p.m., Monday March 15, 2004.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street NW., Suite 800, Boardroom, Washington, DC 20005.

STATUS: Open.

FOR FURTHER INFORMATION CONTACT: Jeffrey T. Bryson, General Counsel/Secretary, (202) 220–2372; *jbryson@nw.org.*

AGENDA:

I. Call To Order
II. Approval of Minutes: December 3, 2003—Regular Meeting
III. Resolution of Appreciation
IV. Audit Committee Meeting, January 23, 2004
V. Budget Committee Meeting, February 11, 2004
VI. Treasurer's Report
VII. Executive Directors' Report
VIII. Adjournment

[FR Doc. 04–5649 Filed 3–9–04; 1:07 pm]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Forms 540 and 540A, ''Uniform Low-Level Radioactive Waste Manifest (Shipping Paper) and Continuation Page;'' NRC Forms 541 and 541A, ''Uniform Low-Level Radioactive Waste Manifest, Container and Waste Description, and Continuation Page;'' NRC Forms 542 and 542A, ''Uniform Low-Level Radioactive Waste Manifest, Index and Regional Compact Tabulation.''

2. *Current OMB approval number:* 3150–0164 for NRC Forms 540 and 540A; 3150–0166 for NRC Forms 541 and 541A; and 3150–0165 for NRC Forms 542 and 542A.

3. *How often the collection is required:* Forms are used by shippers whenever radioactive waste is shipped. Quarterly or less frequent reporting is made to NRC depending on specific license conditions.

4. *Who is required or asked to report:* All NRC-licensed low-level waste facilities. All generators, collectors, and processors of low-level waste intended for disposal at a low-level waste facility must complete the appropriate forms.

5. *The number of annual respondents:*

NRC Forms 540 and 540A: 2,500 licensees.

NRC Forms 541 and 541A: 2,500 licensees.

NRC Forms 542 and 542A: 22 licensees.

6. *The number of hours needed annually to complete the requirement or request:*

NRC Forms 540 and 540A: 10,050 (.75 hours per response).

NRC Forms 541 and 541A: 44,341 (3.3 hours per response).

NRC Forms 542 and 542A: 567 (.75 hours per response).

7. *Abstract:* NRC Forms 540, 541, and 542, together with their continuation pages, designated by the ''A'' suffix, provide a set of standardized forms to meet Department of Transportation (DOT), NRC, and State requirements. The forms were developed by NRC at the request of low-level waste industry groups. The forms provide uniformity and efficiency in the collection of information contained in manifests which are required to control transfers of low-level radioactive waste intended for disposal at a land disposal facility. NRC Form 540 contains information needed to satisfy DOT shipping paper requirements in 49 CFR part 172 and the waste tracking requirements of NRC in 10 CFR part 20. NRC Form 541 contains information needed by disposal site facilities to safely dispose of low-level waste and information to meet NRC and State requirements regulating these activities. NRC Form 542, completed by waste collectors or processors, contains information which facilitates tracking the identity of the waste generator. That tracking becomes more complicated when the waste forms, dimensions, or packagings are changed by the waste processor. Each container of waste shipped from a waste processor may contain waste from several different generators. The information provided on NRC Form 542 permits the States and Compacts to know the original generators of low-level waste, as authorized by the Low-Level Radioactive Waste Policy Amendments Act of 1985, so they can ensure that waste is disposed of in the appropriate Compact.

Submit, by May 10, 2004, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC

home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–5 F52, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 5th day of March 2004.

For the Nuclear Regulatory Commission

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 04–5434 Filed 3–10–04; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: RI 30–1

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 30–1, Request to Disability Annuitant for Information on Physical Condition and Employment, is used by persons who are not yet age 60 and who are receiving disability annuity and are subject to inquiry as to their medical condition as OPM deems reasonably necessary. RI 30–1 collects information as to whether the disabling condition has changed.

Approximately 8,000 RI 30–1 forms will be completed annually. We estimate that it takes approximately 60 minutes to complete the form. The annual burden is 8,000 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or e-mail to *mbtoomey@opm.gov*. Please include your mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Ronald W. Melton, Chief, Operations Support Group, Retirement Services Program, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415,

and

Joseph F. Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, Administrative Services Branch, (202) 606–0623.

U.S. Office of Personnel Management

Kay Coles James,

Director.

[FR Doc. 04–5429 Filed 3–10–04; 8:45 am]

BILLING CODE 6325–50–P

PRESIDIO TRUST

Notice of Public Meeting

AGENCY: The Presidio Trust.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 103(c)(6) of the Presidio Trust Act, 16 U.S.C. 460bb *note,* Title I of Pub. L. 104–333, 110 Stat. 4097, as amended, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Presidio Trust Board of Directors will be held commencing 6:30 p.m. on Wednesday, April 14, 2004, at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.

The purposes of this meeting are to provide the Executive Director's report and to receive public comment regarding the Environmental Assessment (EA) for the Public Health Service Hospital project. A previous notice announcing the availability of the EA and scheduling of a public comment period was published at 69 FR 9651.

Accommodation: Individuals requiring special accommodation at this meeting, such as needing a sign language interpreter, should contact Mollie Matull at (415) 561–5300 prior to April 2, 2004.

FOR FURTHER INFORMATION CONTACT: Karen Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, California 94129–0052, Telephone: (415) 561–5300.

Dated: March 5, 2004.

Karen A. Cook,

General Counsel.

[FR Doc. 04–5515 Filed 3–10–04; 8:45 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26378; File No. 812–13040]

Jackson National Life Insurance Company, et al.

March 5, 2004.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an order under Section 6(c) of the Investment Company Act of 1940 (the ''Act'') granting exemptions from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to permit the recapture of contract enhancements applied to purchase payments made under certain flexible premium deferred variable annuity contracts.

APPLICANTS: Jackson National Life Insurance Company (''Jackson National''), Jackson National Separate Account—I (the ''Separate Account'') and Jackson National Life Distributors, Inc. (''Distributor,'' and collectively, ''Applicants'').

SUMMARY OF APPLICATION: Applicants seek an order under Section 6(c) of the Act to the extent necessary to permit the recapture, under specified circumstances, of certain contract enhancements applied to purchase payments made under the deferred variable annuity contracts described in the application that Jackson National will issue through the Separate Account (the ''Contracts''), as well as other contracts that Jackson National may issue in the future through their existing or future separate accounts (''Other Accounts'') that are substantially similar in all material respects to the Contracts (''Future Contracts''). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. (''NASD'') member broker-dealer controlling or controlled by, or under common control with, Jackson National, whether existing or created in the future, that serves as distributor or principal underwriter for the Contracts or Future Contracts (''Affiliated Broker-Dealers''), and any successors in interest to the Applicants.

FILING DATE: The Application was filed on November 13, 2003, and amended on February 24, 2004.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, in person or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 29, 2004, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Jackson National Life Insurance Company, 1 Corporate Way, Lansing, Michigan 48951, Attn: Susan Rhee, Esq.; copies to Joan E. Boros, Esq., Jorden Burt LLP, 1025 Thomas Jefferson Street, NW., Suite 400 East, Washington, DC 20007–0805.

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Senior Counsel, at (202) 942–0552, or Zandra Y. Bailes, Branch Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 ((202) 942–8090).

Applicants' Representations

1. Jackson National is a stock life insurance company organized under the laws of the state of Michigan in June 1961. Its legal domicile and principal business address is 1 Corporate Way, Lansing, Michigan 48951. Jackson National is admitted to conduct life insurance and annuity business in the District of Columbia and all states except New York. Jackson National is ultimately a wholly-owned subsidiary of Prudential plc (London, England).

2. The Separate Account was established by Jackson National on June 14, 1993, pursuant to the provisions of Michigan law and the authority granted under a resolution of Jackson National's Board of Directors. Jackson National is the depositor of the Separate Account. The Separate Account meets the definition of a ''separate account'' under the federal securities laws and is registered with the Commission as a unit investment trust under the Act (File No. 811–08664). The Separate Account will fund the variable benefits available under the Contracts. The offering of the Contracts will be registered under the Securities Act of 1933 (the ''1933 Act'').

3. The Distributor is a wholly-owned subsidiary of Jackson National and serves as the distributor of the Contracts. The Distributor is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the ''1934 Act'') and is a member of the NASD. The Distributor enters into selling group agreements with affiliated and unaffiliated broker-dealers. The Contracts are sold by licensed insurance agents who are registered representatives of broker-dealers that are registered under the 1934 Act and are members of the NASD.

4. The Contracts require a minimum initial premium payment of $5,000 under most circumstances ($2,000 for a qualified plan contract). Subsequent payments may be made at any time during the accumulation phase. Each subsequent payment must be at least $500 ($50 under an automatic payment plan). Prior approval by Jackson National is required for aggregate premium payments of over $1,000,000.

5. The Contracts permit owners to accumulate contract values on a fixed basis through allocations to one of four fixed accounts (the ''Fixed Accounts''), as made available from time to time which offer guaranteed crediting rates for specified periods of time (currently one, three, five and seven years).

6. The Contracts also permit owners to accumulate contract values on a variable basis, through allocations to one or more of the investment divisions of the Separate Account (the ''Investment Divisions,'' collectively with the Fixed Accounts, the ''Allocation Options''). 55 Investment Divisions are expected to be offered under the Contracts, but additional Investment Divisions may be offered in the future and some of those currently expected to be offered could be eliminated or combined with other Investment Divisions in the future. Similarly, Future Contracts may offer additional or different Investment Divisions.

7. Transfers among the Investment Divisions are permitted. The first 15 transfers in a contract year are free; subsequent transfers cost $25. Certain transfers to, from and among the Fixed Accounts are also permitted during the Contracts' accumulation phase, but are subject to certain adjustments and limitations. Dollar cost averaging and rebalancing transfers are offered at no charge and do not count against the 15 free transfers permitted each year.

8. Each time an owner makes a premium payment during the first contract year, Jackson National will add an additional amount to the owner's contract value (a ''Contract Enhancement''). All Contract Enhancements are paid from Jackson National's general account assets. The Contract Enhancement is equal to five or six percent of the premium payment. Jackson National will allocate the Contract Enhancement to the Fixed Accounts and/or Investment Divisions in the same proportion as the premium payment allocation. The Contract Enhancement is not credited to any premiums received after the first contract year.

9. Jackson National will recapture all or a portion of any Contract Enhancements by imposing a recapture charge whenever an owner: (i) Makes a total withdrawal within the recapture charge period or a partial withdrawal of corresponding premiums within the recapture charge period in excess of those permitted under the Contracts' free withdrawal provisions, unless the withdrawal is made for certain health-related emergencies specified in the Contracts; (ii) elects to receive payments under an income option within the recapture charge period; or (iii) returns the Contract during the free look period.

10. The amount of the recapture charge varies, depending upon which Contract Enhancement is elected, when the charge is imposed and which withdrawal charge schedule is elected, as follows:

CONTRACT ENHANCEMENT RECAPTURE CHARGE

[As a percentage of first year premium payments]

Completed Years Since Premium Receipt	0	1	2	3	4	5	6	7	8+
Charge (5 or 6% Contract Enhancement)	4.5	3.75	3.25	2.75	2	1.25	.5	0	0
Charge (6 year withdrawal charge option)	4.5	3.75	3.25	2.75	2	1.25	0	0	0

11. The recapture charge percentage will be applied to the corresponding premium reflected in the amount withdrawn or the amount applied to income payments that remain subject to a withdrawal charge. The amount recaptured will be taken from the Investment Divisions and the Fixed Accounts in the same proportion as the withdrawal charge.

12. Recapture charges will be waived upon death, but will be applied upon electing to commence income payments, even in a situation where the withdrawal charge is waived. Partial withdrawals will be deemed to remove premium payments on a first-in-first-out basis (the order that entails payment of the lowest withdrawal and recapture charges).

13. Jackson National does not assess the recapture charge on any payments paid out as: Death benefits; withdrawals taken under the free withdrawal provision; withdrawals necessary to satisfy the minimum distribution requirements of the Internal Revenue Code (if the withdrawal requested exceeds the minimum required distribution, the recapture charge will not be waived on the minimum required distribution); if permitted by the owner's state, withdrawals of up to $250,000 from the contract value in connection with the owner's terminal illness or if the owner needs extended hospital or nursing-home care as provided in the Contract; or if permitted by the owner's state, withdrawals of up to 25% of contract value (12.5% for each of two joint owners) from the contract value in connection with certain serious medical conditions specified in the Contract.

14. The contract value will reflect any gains or losses attributable to a Contract Enhancement described above. Contract Enhancements, and any gains or losses attributable to a Contract Enhancement, distributed under the Contracts will be considered earnings under the Contract for tax purposes and for purposes of calculating free withdrawal amounts.

15. If the owner dies during the accumulation phase of the Contracts the beneficiary named by the owner is paid a death benefit by Jackson National. The Contracts' base death benefit, which applies unless an optional death benefit has been elected, is a payment to the beneficiary of the greater of: (i) Contract value on the date Jackson National receives proof of death and completed claim forms from the beneficiary or (ii) the total premiums paid under that Contract minus any prior withdrawals (including any applicable charges and adjustments), annual contract maintenance charges, transfer charges, any applicable charges due under any optional endorsement and premium taxes).

16. The owner is also offered certain optional endorsements that can change the death benefit paid to the beneficiary. First, an ''Earnings Protection Benefit Endorsement'' is offered to owners who are no older than age 75 when their Contracts are issued. This endorsement would add to the death benefit otherwise payable an amount equal to a specified percentage (that varies with the owner's age at issue) of earnings under the Contract up to a cap of 250% of remaining premiums (premiums not previously withdrawn), excluding remaining premiums paid in the 12 months prior to the date of death (other than the initial premium if the owner dies in the first contract year).

17. Second, the owner of a Contract is offered the following five optional death benefits (that would replace the base death benefit): (i) 5% Roll-Up Death Benefit, (ii) 4% Roll-Up Death Benefit, (iii) Highest Anniversary Value Death Benefit, (iv) Combination 5% Roll-Up & Highest Anniversary Value Death Benefit or a (v) Combination 4% Roll-Up & Highest Anniversary Value Death Benefit.

18. The Contracts offer fixed and variable versions of the following four types of annuity payment or ''income payment:'' life income, joint and survivor, life annuity with 120 or 240 monthly payments guaranteed to be paid (although not guaranteed as to amount if variable), and income for a specified period of from 5 to 30 years. The Contracts also offer an optional Guaranteed Minimum Income Benefit endorsement. Jackson National may also offer other income payment options.

19. In addition to the Earnings Protection Benefit and optional death benefit endorsements described above, additional optional endorsements are offered with the Contracts, two of which relate to withdrawals: (i) An endorsement that reduces the withdrawal charges applicable under the Contract and shortens the period for which withdrawal charges are imposed to six years; and (ii) an endorsement that permits an owner to make partial withdrawals, prior to the Income Date that, in total, equal the amount of net premium payments made (if elected after issue, the contract value, less any recapture charges, will be used instead of the net premium payment at issue). Jackson National may offer additional endorsements, including optional income and death benefits, but in no event will such additional features be related to or affect the Contract Enhancement.

20. The Contracts have a ''free look'' period of ten days after the owner receives the Contract (or any longer period required by state law). Contract value, without the deduction for any sales charges, is returned upon exercise of free look rights by an owner unless state law requires the return of premiums paid. The Contract Enhancement recapture charge reduces the amount returned.

21. In addition to the Contract Enhancement recapture charges and transfer charges, the Contracts have the following charges: Mortality and expense risk charge of 1.50%; an administration charge of 0.15% (as an annual percentage of average daily account value); a contract maintenance charge of $35 per year (waived if contract value is $50,000 or more at the time the charge is imposed); a charge for the optional Earnings Protection Benefit of .30% (as an annual percentage of daily account value); a charge for the optional Guaranteed Minimum Income Benefit of .40% (as an annual percentage of the ''GMIB Benefit Base''); charge for the optional limit on the withdrawal charge period to six years of .35% (as an annual percentage of daily account value); a charge for optional death benefits of either .25%, .30%, .40%, .45% or .55% (as an annual percentage of daily account value), depending on which optional death benefit endorsement (if any) is elected; a charge for the optional guaranteed minimum withdrawal benefit of .35% (as an annual percentage of daily account value); a commutation fee that applies only upon withdrawals from income payments for a fixed period, measured by the difference in values paid on such a withdrawal due to using a discount rate of one percent greater than the assumed investment rate used in computing the amounts of income payments; and a withdrawal charge that applies to total withdrawals, to certain partial withdrawals, and on the income date (the date income payments commence) if the income date is within a year of the date the Contract was issued.

22. The withdrawal charge for the Contracts varies, depending upon the contribution year of the premium withdrawn, (but in no event will be greater than) as follows:

WITHDRAWAL CHARGE

[As a percentage of premium payments]

Completed years since receipt of premium	0	1	2	3	4	5	6	7	8	9+
Charge	8.5	8	7	6	5	4	3	2	1	0
Charge if 6 year period is elected	8	7	5.5	4	2.5	1	0	0	0	0

23. The withdrawal charge is waived upon withdrawals to satisfy the minimum distribution requirements of the Internal Revenue Code (if the withdrawal requested exceeds the minimum required distribution, the withdrawal charge will not be waived on the minimum required distribution) and, to the extent permitted by state law, the withdrawal fee is waived in connection with withdrawals of: (i) Up to $250,000 from the contract value in connection with the terminal illness of the owner of a Contract, or in connection with extended hospital or nursing home care for the owner; and (ii) up to 25% (12.5% each for two joint owners) of contract value in connection with certain serious medical conditions specified in the Contract.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission pursuant to Section 6(c) of the Act grant the exemptions requested below with respect to the Contracts and any Future Contracts funded by the Separate Account or Other Accounts that are issued by Jackson National and underwritten or distributed by the Distributor or Affiliated Broker-Dealers. Applicants undertake that Future Contracts funded by the Separate Account or Other Accounts, in the future, will be substantially similar in all material respects to the Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Subsection (i) of Section 27 of the Act provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless such contract is a redeemable security. Section 2(a)(32) defines ''redeemable security'' as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

3. Applicants submit that the recapture of the Contract Enhancement in the circumstances set forth in the application would not deprive an owner of his or her proportionate share of the issuer's current net assets. A Contract owner's interest in the amount of the Contract Enhancement allocated to his or her Contract value upon receipt of a premium payment is not fully vested until three complete years following a premium. Until or unless the amount of any Contract Enhancement is vested, Jackson National retains the right and interest in the Contract Enhancement amount, although not in the earnings attributable to that amount. Thus, Applicants urge that when Jackson National recaptures any Contract Enhancement it is simply retrieving its own assets, and because a Contract owner's interest in the Contract Enhancement is not vested, the Contract owner has not been deprived of a proportionate share of the Separate Account's assets, *i.e.*, a share of the Separate Account's assets proportionate to the Contract owner's contract value.

4. In addition, Applicants state that it would be patently unfair to allow a Contract owner exercising the free-look privilege to retain the Contract Enhancement amount under a Contract that has been returned for a refund after a period of only a few days. If Jackson National could not recapture the Contract Enhancement, Applicants claim that individuals could purchase a Contract with no intention of retaining it and simply return it for a quick profit. Furthermore, Applicants state that the recapture of the Contract Enhancement relating to withdrawals or receiving income payments within the first seven years of a premium contribution is designed to protect Jackson National against Contract owners not holding the Contract for a sufficient time period. According to Applicants, it would provide Jackson National with insufficient time to recover the cost of the Contract Enhancement, to its financial detriment.

5. Applicants represent that it is not administratively feasible to track the Contract Enhancement amount in the Separate Accounts after the Contract Enhancement(s) is applied. Accordingly, the asset-based charges applicable to the Separate Accounts will be assessed against the entire amounts held in the Separate Accounts, including any Contract Enhancement amounts. As a result, the aggregate asset-based charges assessed will be higher than those that would be charged if the Contract owner's Contract value did not include any Contract Enhancement. Jackson National nonetheless represents that the Contracts' fees and charges, in the aggregate, are reasonable in relation to service rendered, the expenses expected to be incurred, and the risks assumed by Jackson National.

6. Applicants submit that the provisions for recapture of any Contract Enhancement under the Contracts do not violate Sections 2(a)(32) and 27(i)(2)(A) of the Act. Applicants assert that the application of a Contract Enhancement to premium payments made under the Contracts should not raise any questions as to compliance by Jackson National with the provisions of Section 27(i). However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from Sections 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of any Contract Enhancement under the circumstances described in the Application, without the loss of relief from Section 27 provided by Section 27(i).

7. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the

redeemable securities of any registered investment company to accomplish the same purposes as contemplated by Section 22(a). Rule 22c–1 under the Act prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

8. It is possible that someone might view Jackson National's recapture of the Contract Enhancements as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Separate Accounts. Applicants contend, however, that the recapture of the Contract Enhancement does not violate Rule 22c–1. The recapture of some or all of the Contract Enhancement does not involve either of the evils that Rule 22c–1 was intended to eliminate or reduce as far as reasonably practicable, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or repurchase at a price above it; and (ii) other unfair results, including speculative trading practices. To effect a recapture of a Contract Enhancement, Jackson National will redeem interests in a Contract owner's Contract value at a price determined on the basis of the current net asset value of the Separate Accounts. The amount recaptured will be less than or equal to the amount of the Contract Enhancement that Jackson National paid out of its general account assets. Although Contract owners will be entitled to retain any investment gains attributable to the Contract Enhancement and to bear any investment losses attributable to the Contract Enhancement, the amount of such gains or losses will be determined on the basis of the current net asset values of the Separate Accounts. Thus, no dilution will occur upon the recapture of the Contract Enhancement. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Contract Enhancement. Applicants assert that, because neither of the harms that Rule 22c–1 was meant to address is found in the recapture of the Contract Enhancement, Rule 22c–1 should not apply to any Contract Enhancement. However, to avoid any uncertainty as to full compliance with Rule 22c–1, Applicants request an exemption from the provisions of Rule 22c–1 to the extent deemed necessary to permit them to recapture the Contract Enhancement under the Contracts.

9. Applicants submit that extending the requested relief to encompass Future Contracts and Other Accounts is appropriate in the public interest because it promotes competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications prior to introducing new variable annuity contracts. Applicants assert that investors would receive no benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issues under the Act not already addressed in the Application.

Applicants further submit, for the reasons stated herein, that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–5546 Filed 3–10–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26379; File No. 812–13053]

Jackson National Life Insurance Company, et al.

March 5, 2004.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an amended order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') granting exemptions from the provisions of sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to permit the recapture of contract enhancements applied to purchase payments made under certain flexible premium, deferred variable annuity contracts.

Applicants: Jackson National Life Insurance Company (''Jackson National''), Jackson National Separate Account—I (the ''JNL Separate Account''), Jackson National Life Insurance Company of New York (''JNL New York,'' and collectively with Jackson National, the ''Insurance Companies''), JNLNY Separate Account I (the ''JNLNY Separate Account,'' and collectively with JNL Separate Account, the ''Separate Accounts''), and Jackson National Life Distributors, Inc. (''Distributor,'' collectively with the Insurance Companies and Separate Accounts, ''Applicants'').

Summary of Application: Applicants seek an order under section 6(c) of the Act to amend an existing order to the extent necessary to permit the recapture, under specified circumstances, of certain contract enhancements applied to purchase payments made under the flexible premium, deferred variable annuity contracts described herein that Jackson National will issue through the JNL Separate Account (the ''Amended JNL Contract'') and that JNL New York will issue through the JNLNY Separate Account (the ''Amended JNLNY Contract,'' and collectively with the Amended JNL Contract, the ''Amended Contract(s)''), as well as other contracts that the Insurance Companies may issue in the future through their existing or future separate accounts (''Other Accounts'') that are substantially similar in all material respects to the Amended Contracts (''Future Contracts''). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. (''NASD'') member broker-dealer controlling or controlled by, or under common control with, Jackson National, whether existing or created in the future, that serves as distributor or principal underwriter for the Amended Contracts or Future Contracts (''Affiliated Broker-Dealers''), and any successors in interest to the Applicants.

Filing Date: The application was filed on December 23, 2003.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, in person or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 29, 2004, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service.

Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Susan Rhee, Esq., Jackson National Life Insurance Company, 1 Corporate Way, Lansing, Michigan 48951; copies to Joan Boros, Esq., Jorden Burt LLP, 1025 Thomas Jefferson Street, NW., Suite 400 East, Washington, DC 20007–0805.

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Senior Counsel, at (202) 942–0552, or Zandra Y. Bailes, Branch Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 ((202) 942–8090).

Applicants' Representations:

1. Jackson National is a stock life insurance company organized under the laws of the state of Michigan in June 1961. Its legal domicile and principal business address is 1 Corporate Way, Lansing, Michigan 48951. Jackson National is admitted to conduct life insurance and annuity business in the District of Columbia and all states except New York. Jackson National is ultimately a wholly-owned subsidiary of Prudential plc (London, England).

2. JNL New York is a stock life insurance company organized under the laws of the state of New York in July 1995. Its legal domicile and principal address is 2900 Westchester Avenue, Purchase, New York 10577. JNL New York is admitted to conduct life insurance and annuity business in Delaware, Michigan and New York. JNL New York is ultimately a wholly-owned subsidiary of Prudential plc (London, England).

3. The JNL Separate Account was established by Jackson National on June 14, 1993, pursuant to the provisions of Michigan law and the authority granted under a resolution of Jackson National's Board of Directors. The JNLNY Separate Account was established by JNL New York on September 12, 1997, pursuant to the provisions of New York law and the authority granted under a resolution of JNL New York's Board of Directors. Jackson National and JNL New York each is the depositors of its respective Separate Account. Each of the Separate Accounts meets the definition of a ''separate account'' under the federal securities laws and each is registered with the Commission as a unit investment trust under the Act (File Nos. 811–08664 and 811–08401, respectively). JNL Separate Account and JNLNY Separate Account will fund, respectively, the variable benefits available under the Amended JNL Contracts and the Amended JNLNY Contracts. The offering of the Amended Contracts will be registered under the Securities Act of 1933 (the ''1933 Act'').

4. The Distributor is a wholly-owned subsidiary of Jackson National and serves as the distributor of the Amended Contracts. The Distributor is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the ''1934 Act'') and is a member of the NASD. The Distributor enters into selling group agreements with affiliated and unaffiliated broker-dealers. The Amended Contracts are sold by licensed insurance agents, where the Amended Contracts may be lawfully sold, who are registered representatives of broker-dealers which are registered under the 1934 Act and are members of the NASD.

5. The Amended Contracts require a minimum initial premium payment of $5,000 under most circumstances ($2,000 for a qualified plan contract). Subsequent payments may be made at any time during the accumulation phase. Each subsequent payment must be at least $500 ($50 under an automatic payment plan). Prior approval by the relevant Insurance Company is required for aggregate premium payments of over $1,000,000.

6. The Amended JNL Contracts permit owners to accumulate contract values on a fixed basis through allocations to one of seven fixed accounts (the ''Fixed Accounts''), including four ''Guaranteed Fixed Accounts'' which offer guaranteed crediting rates for specified periods of time (currently, 1, 3, 5, or 7 years), two ''DCA+ Fixed Accounts'' (used in connection with dollar cost averaging transfers, each of which from time to time offers special crediting rates) and an ''Indexed Fixed Option'' (with a minimum guaranteed return and additional possible returns based on the performance of the S&P 500 Index).

7. The Amended JNLNY Contracts permit owners to accumulate contract values on a fixed basis through allocations to one of four ''Guaranteed Fixed Accounts'' which offer guaranteed crediting rates for specified periods of time (currently, 1, 3, 5, or 7 years).

8. The Amended Contracts also permit owners to accumulate contract values on a variable basis, through allocations to one or more of the sub-accounts of the Separate Accounts (the ''Investment Divisions,'' and collectively with the Fixed Accounts, the ''Allocation Options''). There are currently 55 Investment Divisions expected to be offered under the Amended Contracts, but additional Investment Divisions may be offered in the future and some of those currently expected to be offered could be eliminated or combined with other Investment Divisions in the future. Similarly, Future Contracts may offer additional or different Investment Divisions. Each Investment Division will invest in shares of a corresponding series of JNL Series Trust or JNL Variable Fund LLC. Not all Investment Divisions may be available.

9. Transfers among the Investment Divisions are permitted. The first 15 transfers in a contract year are free; subsequent transfers cost $25. Certain transfers to, from and among the Fixed Accounts are also permitted during the Amended Contracts' accumulation phase, but are subject to certain adjustments and limitations. Dollar cost averaging and rebalancing transfers are offered at no charge and do not count against the 15 free transfers permitted each year.

10. The owner is also offered certain optional endorsements (for fees described below) that can change the death benefit paid to the beneficiary. First, an ''Earnings Protection Benefit Endorsement'' is offered to owners who are no older than age 75 when their Amended Contracts are issued. This endorsement would add to the death benefit otherwise payable an amount equal to a specified percentage (that varies with the owner's age at issue) of earnings under the Amended Contract up to a cap of 250% of remaining premiums (premiums not previously withdrawn) excluding remaining premiums paid in the 12 months prior to the date of death (other than the initial premium if the owner dies in the first contract year), plus remaining premiums in the Indexed Fixed Option (the amount allocated to the Indexed Fixed Option accumulated at 3% annually, and adjusted for any amounts cancelled or withdrawn for charges, deductions, withdrawals or any taxes due).

11. Second, the owner of an Amended JNL Contract (but not an Amended JNLNY Contract) is offered the following five optional death benefits (that would replace the base death benefit): (i) A ''4% Roll-Up Death Benefit'', (ii) a ''5% Roll-Up Death Benefit'', (iii) a ''Highest Anniversary Value Death Benefit'', (iv) a ''Combination 4% Roll-Up and Highest

Anniversary Value Death Benefit'' or (v) a ''Combination 5% Roll-Up and Highest Anniversary Value Death Benefit.''

12. The Amended Contracts offer fixed and variable versions of the following four types of annuity payment or ''income payment:'' life income, joint and survivor, life annuity with 120 or 240 monthly payments guaranteed to be paid (although not guaranteed as to amount if variable), and income for a specified period of from 5 to 30 years. The Insurance Companies may also offer other income payment options.

13. In addition to the Earnings Protection Benefit and optional death benefit endorsements described above and the optional Contract Enhancements endorsements defined below, additional optional endorsements are offered with the Amended Contracts, four of which relate to withdrawals: (i) An endorsement that expands the percentage of premiums (that remain subject to a withdrawal charge) that may be withdrawn in a contract year with no withdrawal charge imposed from 10% to 20%; (ii) an endorsement that reduces the withdrawal charges applicable under the Amended Contract and shortens the period for which withdrawal charges are imposed from seven years to five years or three years; (iii) an endorsement, the Guaranteed Minimum Withdrawal Benefit (''GMWB''), that permits partial withdrawals prior to the Income Date (so long as gross partial withdrawals taken within any one contract year do not exceed 7% of net premium payments) that in total equal the amount of net premium payments made (if elected after issue, the contract value, less any recapture charges will be used instead of the net premium payment at issue); and (iv) on May 1, 2004, an additional 5% for Life GMWB will be offered, which will permit partial withdrawals prior to the Income Date for the longer of the duration of the owner's life or until total periodic withdrawals equals (a) the total net premium payments if elected at issue or (b) contract value net of any recapture charges if elected after issue.

14. If one of the optional Contract Enhancement endorsements is elected, each time an owner makes a premium payment during the first contract year, Jackson National or JNL New York will add an additional amount to the owner's contract value (a ''Contract Enhancement''). All Contract Enhancements are paid from the Insurance Companies' general account assets. The Contract Enhancement is equal to 2%, 3%, or 4% of the premium payment. At issue, an Amended Contract Owner can choose only one of the Contract Enhancement endorsements. An owner may not elect the 3% or 4% Contract Enhancements if the 20% additional free withdrawal endorsement is elected. The Insurance Companies will allocate the Contract Enhancement to the guaranteed accounts and/or Investment Divisions in the same proportion as the premium payment allocation. The Contract Enhancement is not credited to any premiums received after the first contract year.

15. There is an asset-based charge for each of the Contract Enhancements. The 2% Contract Enhancement has a 0.395% charge that applies for five years. The asset-based charges for the other Contract Enhancements apply for seven years and are 0.42% and 0.56%, respectively, for the 3% and 4% Contract Enhancements. These charges will also be assessed against any amounts an Amended Contract owner has allocated to the guaranteed accounts, resulting in a lower credited interest rate than the annual credited interest rate that would apply to the guaranteed account if the Contract Enhancement had not been elected.

16. The Insurance Companies will recapture all or a portion of any Contract Enhancements by imposing a recapture charge whenever an owner: (i) makes a total withdrawal within the recapture charge period (five years after a first year payment in the case of the 2% Contract Enhancement and seven years after a first year payment in the case of the other Contract Enhancements) or a partial withdrawal of corresponding premiums within the recapture charge period in excess of those permitted under the Amended Contracts' free withdrawal provisions (including free withdrawals permitted by a 20% additional free withdrawal endorsement), unless the withdrawal is made for certain health-related emergencies specified in the Amended Contracts (not all of which are available in the Amended JNLNY contracts); (ii) elects to receive payments under an income option within the recapture charge period; or (iii) returns the Amended Contract during the free look period

17. The amount of the recapture charge varies, depending upon which Contract Enhancement is elected and when the charge is imposed, as follows:

CONTRACT ENHANCEMENT RECAPTURE CHARGE

[As a Percentage of First Year Premium Payments]

Completed years since receipt of premium	0	1	2	3	4	5	6	7+
.								
Recapture Charge (2% Credit)	2%	2%	1.25%	1.25%	0.5%	0	0	0
Recapture Charge (3% Credit)	3%	3%	2%	2%	2%	1%	1%	0
Recapture Charge (4% Credit)	4%	4%	2.5%	2.5%	2.5%	1.25%	1.25%	0

18. The recapture charge percentage will be applied to the corresponding premium reflected in the amount withdrawn or the amount applied to income payments that remains subject to a withdrawal charge. The amount recaptured will be taken from the Investment Divisions and the guaranteed accounts in the same proportion as the withdrawal charge.

19. Recapture charges will be waived upon death, but will be applied upon electing to commence income payments, even in a situation where the withdrawal charge is waived. Partial withdrawals will be deemed to remove premium payments on a first-in-first-out basis (the order that entails payment of the lowest withdrawal and recapture charges).

20. The Insurance Companies do not assess the recapture charge on any payments paid out as: death benefits; withdrawals necessary to satisfy the minimum distribution requirements of the Internal Revenue Code; if permitted by the owner's state, withdrawals of up to $250,000 from the Separate Account or from the Fixed Accounts other than the Indexed Fixed Option in connection with the owner's terminal illness or if the owner needs extended hospital or nursing home care as provided in the Amended Contract; or if permitted by the owner's state, withdrawals of up to 25% of contract value (12.5% for each

of two joint owners) in connection with certain serious medical conditions specified in the Amended Contract.

21. The contract value will reflect any gains or losses attributable to a Contract Enhancement described above. Contract Enhancements, and any gains or losses attributable to a Contract Enhancement, distributed under the Amended Contracts will be considered earnings under the Amended Contract for tax purposes and for purposes of calculating free withdrawal amounts.

22. The Amended JNL Contracts have a ''free look'' period of ten (twenty for Amended JNLNY Contracts) days after the owner receives the Amended Contract (or any longer period required by state law). Contract value is returned upon exercise of free look rights by an owner unless state law requires the return of premiums paid. The Contract Enhancement recapture charge reduces the amount returned.

23. In addition to the Contract Enhancement charges and the Contract Enhancement recapture charges, the Amended JNL Contracts have the following charges: mortality and expense risk charge of 1.10% (as an annual percentage of average daily account value); administration charge of 0.15% (as an annual percentage of average daily account value); contract maintenance charge of $35 per year (waived if contract value is $50,000 or more at the time the charge is imposed); Earnings Protection Benefit charge of 0.30% (as an annual percentage of daily account value—only applies if related optional endorsement is elected); GMIB charge of .60% per year (0.15% per quarter) of the ''GMIB Benefit Base;'' GMWB charge of .70% (the current charge for GMWB is .35% and currently there is an increase in the charge to .55% when a ''step-up'' is elected); 5% for Life GMWB charge is an annual asset based charge that will vary by age; 20% additional free withdrawal benefit charge of 0.30% (as an annual percentage of daily account value—only applies if related optional endorsement is elected); five-year withdrawal charge period charge of 0.30% (as an annual percentage of daily account value—only applies if related optional endorsement is elected); three-year withdrawal charge period charge of 0.45% (as an annual percentage of daily account value—only applies if related optional endorsement is elected); optional death benefit charge of either 0.30% or 0.55% (as an annual percentage of daily account value—only applies if related optional endorsement is elected) depending upon which (if any) optional death benefit endorsement is elected; transfer fee of $25 for each transfer in excess of 15 in a contract year (for purposes of which dollar cost averaging and rebalancing transfers are excluded); commutation fee that applies only upon withdrawals from income payments for a fixed period, measured by the difference in values paid upon such a withdrawal due to using a discount rate of 1% greater than the assumed investment rate used in computing the amounts of income payments; and a withdrawal charge that applies to total withdrawals, partial withdrawals in excess of amounts permitted to be withdrawn under the Amended JNL Contract's free withdrawal provisions (or the 20% additional free withdrawal endorsement) and on the income date (the date income payments commence) if the income date is within a year of the date the Amended JNL Contract was issued.

24. The withdrawal charge for the Amended JNL Contracts varies, depending upon the contribution year of the premium withdrawn as follows:

WITHDRAWAL CHARGE

[As a Percentage of Premium Payments]

Completed years since receipt of premium	0	1	2	3	4	5	6	7+
Withdrawal Charge	8.5	8	7	6	5	4	2	0
Withdrawal Charge if Five-Year Period is elected	8	7	6	4	2	0	0	0
Withdrawal Charge if Three-Year Period is elected	7.5	6.5	5	0	0	0	0	0

25. The withdrawal charge is waived upon withdrawals to satisfy the minimum distribution requirements of the Internal Revenue Code and, to the extent permitted by state law, the withdrawal fee is waived in connection with withdrawals of: (i) Up to $250,000 from the Investment Divisions or the Guaranteed Fixed Accounts of the Amended Contracts in connection with the terminal illness of the owner of an Amended Contract, or in connection with extended hospital or nursing home care for the owner; and (ii) up to 25% (12.5% each for two joint owners) of contract value (excluding values allocated to the Indexed Fixed Option) in connection with certain serious medical conditions specified in the Amended Contract.

26. The Amended JNLNY Contracts are identical to the Amended JNL Contracts in the operation of Contract Enhancements, Contract Enhancement charges and Contract Enhancement recapture charges.

27. The Amended JNLNY Contracts are identical in other aspects as well, with the following exceptions: (i) The Indexed Fixed Option, DCA+Fixed Account, waivers of withdrawal charges for terminal illness and specified medical conditions, and the three optional death benefits which replace the base death benefit will not be available under the Amended JNLNY Contracts; (ii) the death benefit of the Amended JNLNY Contracts will be the greatest of: contract value on the date that JNL New York receives proof of death and an election of the type of payment from the beneficiary, total premiums minus withdrawals (including any applicable charges and adjustments), and premium taxes and the maximum contract value on any anniversary prior to the owner's 86th birthday, minus any withdrawals and withdrawal charges, and plus any premiums paid after that anniversary; (iii) the mortality and expense risk charge for the Amended JNLNY Contracts is 1.20% (as an annual percentage of average daily account value); and (iv) the annual contract maintenance fee is $30 for the Amended JNLNY Contracts (applicable only when contract value is less than $50,000).

28. The withdrawal charges of the Amended JNLNY Contracts are as follows:

WITHDRAWAL CHARGE

[As a percentage of premium payments]

Contribution year of premium payment	1	2	3	4	5	6	7	8+
Withdrawal Charge	7	6	5	4	3	2	1	0
Withdrawal Charge if Five-Year Period is elected	6.5	5	3	2	1	0	0	0
Withdrawal Charge if Three-Year Period is elected	6	4	2	0	0	0	0	0

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission pursuant to section 6(c) of the Act grant the exemptions requested below with respect to the Amended Contracts and any Future Contracts funded by the Separate Accounts or Other Accounts that are issued by the Insurance Companies and underwritten or distributed by the Distributor or Affiliated Broker-Dealers. Applicants undertake that Future Contracts funded by the Separate Accounts or Other Accounts, in the future, will be substantially similar in all material respects to the Amended Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Subsection (i) of section 27 of the Act provides that section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless such contract is a redeemable security. Section 2(a)(32) defines ''redeemable security'' as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

3. Applicants submit that the recapture of the Contract Enhancement in the circumstances set forth in the application would not deprive an owner of his or her proportionate share of the issuer's current net assets. An Amended Contract owner's interest in the amount of the Contract Enhancement allocated to his or her Contract value upon receipt of a premium payment is not fully vested until five or seven complete years following a premium. Until or unless the amount of any Contract Enhancement is vested, the Insurance Companies retain the right and interest in the Contract Enhancement amount, although not in the earnings attributable to that amount. Thus, Applicants urge that when the Insurance Companies recapture any Contract Enhancement they are simply retrieving their own assets, and because an Amended Contract owner's interest in the Contract Enhancement is not vested, the Amended Contract owner has not been deprived of a proportionate share of the Separate Account's assets, *i.e.*, a share of the Separate Account's assets proportionate to the Amended Contract owner's contract value.

4. In addition, Applicants state that it would be patently unfair to allow an Amended Contract owner exercising the free-look privilege to retain the Contract Enhancement amount under an Amended Contract that has been returned for a refund after a period of only a few days. If the Insurance Companies could not recapture the Contract Enhancement, Applicants claim that individuals could purchase an Amended Contract with no intention of retaining it and simply return it for a quick profit. Furthermore, Applicants state that the recapture of the Contract Enhancement relating to withdrawals or receiving income payments within the first five or seven years of a premium contribution is designed to protect the Insurance Companies against Amended Contract owners not holding the Amended Contract for a sufficient time period. According to Applicants, it would provide the Insurance Companies with insufficient time to recover the cost of the Contract Enhancement, to its financial detriment.

5. Applicants represent that it is not administratively feasible to track the Contract Enhancement amount in the Separate Accounts after the Contract Enhancement(s) is applied. Accordingly, the asset-based charges applicable to the Separate Accounts will be assessed against the entire amounts held in the Separate Accounts, including any Contract Enhancement amounts. As a result, the aggregate asset-based charges assessed will be higher than those that would be charged if the Amended Contract owner's Contract value did not include any Contract Enhancement. The Insurance Companies nonetheless represent that the Amended Contracts' fees and charges, in the aggregate, are reasonable in relation to service rendered, the expenses expected to be incurred, and the risks assumed by the Insurance Companies.

6. Applicants represent that the Contract Enhancement will be attractive to and in the interest of investors because it will permit owners to put 102%, 103% or 104% of their first-year premium payments to work for them in the Investment Divisions and the guaranteed accounts. In addition, the owner will retain any earnings attributable to the Contract Enhancements recaptured, as well as the principal of the Contract Enhancement amount once vested.

7. Applicants submit that the provisions for recapture of any Contract Enhancement under the Amended Contracts do not violate sections 2(a)(32) and 27(i)(2)(A) of the Act. Applicants assert that the application of a Contract Enhancement to premium payments made under the Amended Contracts should not raise any questions as to compliance by the Insurance Companies with the provisions of section 27(i). However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from section 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of any Contract Enhancement under the circumstances described in the application, without the loss of relief from section 27 provided by section 27(i).

8. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered

investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by section 22(a). Rule 22c–1 under the Act prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

9. It is possible that someone might view the Insurance Companies' recapture of the Contract Enhancements as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Separate Accounts. Applicants contend, however, that the recapture of the Contract Enhancement does not violate Rule 22c–1. The recapture of some or all of the Contract Enhancement does not involve either of the evils that Rule 22c–1 was intended to eliminate or reduce as far as reasonably practicable, namely: (i) the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices. To effect a recapture of a Contract Enhancement, the Insurance Companies will redeem interests in an Amended Contract owner's Contract value at a price determined on the basis of the current net asset value of the Separate Accounts. The amount recaptured will be less than or equal to the amount of the Contract Enhancement that the Insurance Companies paid out of their general account assets. Although Amended Contract owners will be entitled to retain any investment gains attributable to the Contract Enhancement and to bear any investment losses attributable to the Contract Enhancement, the amount of such gains or losses will be determined on the basis of the current net asset values of the Separate Accounts. Thus, no dilution will occur upon the recapture of the Contract Enhancement. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Contract Enhancement. Applicants assert that, because neither of the harms that Rule 22c–1 was meant to address is found in the recapture of the Contract Enhancement, Rule 22c–1 should not apply to any Contract Enhancement. However, to avoid any uncertainty as to full compliance with Rule 22c–1, Applicants request an exemption from the provisions of Rule 22c–1 to the extent deemed necessary to permit them to recapture the Contract Enhancement under the Amended Contracts.

10. Applicants submit that extending the requested relief to encompass Future Contracts and Other Accounts is appropriate in the public interest because it promotes competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications prior to introducing new variable annuity contracts. Investors would receive no benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issues under the Act not already addressed in the application.

Applicants further submit, for the reasons stated herein, that their exemptive request meets the standards set out in section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–5547 Filed 3–10–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49367; File No. SR–CBOE–2004–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. to Adopt Rules and Procedures Governing the Execution of Complex Orders Involving Options and Security Futures

March 5, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 23, 2004, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 4, 2004, CBOE submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to adopt rules and procedures governing the execution of complex orders involving options and security futures. The text of the proposed rule change follows. Additions are in italics. Deleted text is in brackets.

Chicago Board Options Exchange, Incorporated Rules

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CHAPTER I—Definitions

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Rule 1.1. Definitions

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Stock-Option Order

(ii) A stock-option order is an order to buy or sell a stated number of units of an underlying or a related security coupled with either (a) the purchase or sale of option contract(s) [of the same series] on the opposite side of the market representing *either* the same number of units of the underlying or related security *or the number of units of the underlying security necessary to*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

create a delta neutral position or (b) the purchase [and] *or* sale of an equal number of put and call option contracts, each having the same exercise price, expiration date and *each representing the same* number of units of [the underlying or related security] *stock as, and* on the opposite side of the market *from,* [representing in aggregate twice the number of units of] the underlying or related security *portion of the order.*

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Security Future-Option Order

(zz) A security future-option order, which shall be deemed a type of Inter-regulatory Spread Order as that term is defined in Rule 1.1(ll), is an order to buy or sell a stated number of units of a security future or a related security convertible into a security future (''convertible security future'') coupled with either (a) the purchase or sale of option contract(s) on the opposite side of the market representing either the same number of the underlying for the security future or convertible security future or the number of units of the underlying for the security future or convertible security future necessary to create a delta neutral position or (b) the purchase or sale of an equal number of put and call option contracts, each having the same exercise price, expiration date and each representing the same number of the underlying for the security future or convertible security future, as and on the opposite side of the market from, the underlying for the security future or convertible security future portion of the order.

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CHAPTER VI—Doing Business on the Exchange Floor

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Rule 6.9. Solicited Transactions

A member or member organization representing an order respecting an option traded on the Exchange (an ''original order''), including a spread, combination, or straddle order as defined in Rule 6.53, [or] a stock-option order as defined in Rule 1.1(ii) *or a security future-option order as defined in Rule 1.1(zz),* may solicit a member or member organization or a non-member customer or broker-dealer (the ''solicited person'') to transact in-person or by order (a ''solicited order'') with the original order. In addition, whenever a floor broker who is aware of, but does not represent, an original order solicits one or more persons or orders in response to an original order, the persons solicited and any resulting orders are solicited persons or solicited orders subject to this Rule. Original orders and solicited orders are subject to the following conditions.

(a)–(f) No change.

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Rule 6.45. Priority of Bids and Offers—Allocation of Trades

Except as provided by Rules, including but not limited to Rule 6.2A, 6.8, 6.9, 6.13, 6.45A, Rule 6.47, Rule 6.74, Rule 8.87, and CBOE Regulatory Circulars approved by the SEC concerning Participation Rights, the following rules of priority shall be observed with respect to bids and offers:

(a)–(d) No change.

(e) Complex Order Priority Exception: A member holding a spread, straddle, combination, or ratio order (or a stock-option order *or security future-option order,* as defined in Rule 1.1(ii)(b) *and Rule 1.1(zz)(b), respectively*) and bidding (offering) on a net debit or credit basis (in a multiple of the minimum increment) may execute the order with another member without giving priority to equivalent bids (offers) in the trading crowd or in the book provided at least one leg of the order betters the corresponding bid (offer) in the book. Stock-option orders *and security future-option orders,* as defined in Rule 1.1(ii)(a) *and Rule 1.1(zz)(a), respectively,* have priority over bids (offers) of the trading crowd but not over bids (offers) of public customers in the limit order book.

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Rule 6.45A. Priority and Allocation of Trades for CBOE Hybrid System

Generally: The rules of priority and order allocation procedures set forth in this rule shall apply only to option classes designated by the Exchange to be traded on the CBOE Hybrid System.

(a) No change.

(b)(i)–(ii) No change.

(b)(iii) Exception: Complex Order Priority: A member holding a spread, straddle, or combination order (or a stock-option order *or security future-option order,* as defined in Rule 1.1(ii)(b) *and Rule 1.1(zz)(b), respectively*) and bidding (offering) on a net debit or credit basis (in a multiple of the minimum increment) may execute the order with another member without giving priority to equivalent bids (offers) in the trading crowd or in the electronic book provided at least one leg of the order betters the corresponding bid (offer) in the book. Stock-option orders *and security future-option orders,* as defined in Rule 1.1(ii)(a) *and Rule 1.1(zz)(a), respectively,* have priority over bids (offers) of the trading crowd but not over bids (offers) of public customers in the limit order book.

(c)–(e) No change.

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Rule 6.48. Contract Made on Acceptance of Bid or Offer

(a) No change.

(b) Stock-option orders *and security future-option orders.* (i) A bid or offer that is identified to the Exchange trading crowd as part of a stock-option order, as defined in Rule 1.1(ii), *or a security future-option order, as defined in Rule 1.1(zz),* is made and accepted subject to the following conditions:

(A) At the time the stock-option order *or security future-option order* is announced, the member initiating the order must disclose to the crowd all legs of the order and must identify the specific market(s) on which and the price(s) at which the non-option leg(s) of the order is to be filled, and

(B) Concurrent with the execution of the options leg of the order, the initiating member and each member that agrees to be a contra-party on the non-option leg(s) of the order must take steps immediately to transmit the non-option leg(s) to the identified market(s) for execution.

(ii) A trade representing the execution of the options leg of a stock-option order *or a security future-option order* may be cancelled at the request of any member that is a party to that trade only if market conditions in any of the non-Exchange market(s) prevent the execution of the non-option leg(s) at the price(s) agreed upon.

(c) No change.

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Rule 6.74. ''Crossing'' Orders

(a)–(e) No change.

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*** * * Interpretations and Policies**

.01–.02 No change.

.03 Spread, straddle, stock-option (as defined in Rule 1.1(ii)), inter-regulatory spread as defined in Rule 1.1([kk]*ll*) *(including security future-option orders as defined in Rule 1.1 (zz))* or combination orders on opposite sides of the market may be crossed, provided that the Floor Broker holding such orders proceeds in the manner described in paragraphs (a) or (b) above as appropriate. Members may not prevent a spread, straddle, stock-option, inter-regulatory spread *(including a security future-option order)* or combination cross from being completed by giving a competing bid or offer for one component of such order.

.04 [With the exception of inter-regulatory spreads, where] *Where* a related [transaction] *order* must be effected in another market, *the member must take steps to transmit the related order(s) concurrently with the execution of the options leg(s) of the order* [the transaction must be effected prior to effecting the options transaction]. *A trade representing the execution of the options leg of a stock-option order or a security future-option order may be cancelled at the request of any member that is a party to that trade only if market conditions in any of the non-Exchange market(s) prevent the execution of the non-option leg(s) at the price(s) agreed upon.*

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CHAPTER XXVII—Buy-Write Option Unitary Derivatives (''BOUNDs'')

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Rule 27.1. Definitions

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Security Future-Option Order

(m) Security Future-Option Order—A security future-option order as used in respect of a BOUND means an order to buy or sell a stated number of units of a security future or a related security convertible into a security future (''convertible security future'') coupled with a transaction in a BOUND contract on the opposite side of the market representing the same number of underlying units for the security future or convertible security future.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commodity Futures Modernization Act of 2000 [3] lifted the ban on the trading of single stock futures and futures on narrow-based security indices (together, ''security futures'') in the United States. This proposed rule change addresses complex orders involving options and security futures and also revises the definition of stock-option order. Specifically, the proposed rule change (i) amends the definition of stock-option order, (ii) creates a new definition for a security futures option order (''security future-option order'') based on the proposed definition of stock-option order and grants certain execution priorities to security future-option orders, (iii) authorizes the execution of security future-option orders according to procedures that are identical to CBOE's current execution procedures for stock-option orders and (iv) incorporates the security future-option order concept into other CBOE rules where stock-option orders are addressed.

The Exchange's current definition of stock-option order [4] does not provide for the execution of stock-option orders to create delta neutral positions. The Exchange states that complex orders that create delta neutral positions are effective hedging strategies that would permit Exchange members to initially offset the risk of price movements in an option position with a corresponding purchase or sale of stock underlying the option position. The Exchange notes that the language in the proposed amendment to the definition of stock-option order mirrors the corresponding language contained in International Securities Exchange, Inc. (''ISE'') Rule 722—Complex Orders.[5]

The proposed rule change creates a new definition of security future-option order for a complex order involving security futures and options that is based on the proposed definition of stock-option order. Therefore, complex orders consisting of security futures and options legs that fall within the proposed definition of security future-option order will be entitled to the same priorities that the proposed definition of stock-option order affords to certain complex orders involving stocks and options. The Commission approved the definition of a single stock future-option order for ISE that the Exchange states is substantially similar to its proposed definition of a security future-option order.[6]

The proposed rule change amends CBOE Rules 6.45(e) and 6.45A(b)(iii) to permit Exchange members to execute security future-option orders, the options legs of which will have priority over bids or offers of the trading crowd but not over bids or offers of public customers in the book. The proposed rules also provide that members holding security future-option orders and bidding or offering on a net debit or credit basis may execute the order with another member without giving priority to equivalent bids or offers in the trading crowd or the book, provided at least one option leg of the order betters the corresponding bid or offer in the book. The priority rules in the previous two sentences are identical to the current Exchange priority rules governing stock-option orders.

The proposed rule change also amends CBOE Rule 6.48(b) to provide execution procedures for security future-option orders. Proposed CBOE Rule 6.48(b) provides that the initiating member and the contra-parties with respect to a security future-option order must take steps to transmit the security futures leg to a futures exchange concurrent with the execution of the options leg(s) of the order.[7] Because security futures products may not be fungible between markets, the member initiating the security future-option order must identify the specific market of execution. As with stock-option orders, if the security futures leg of the security future-option order cannot be

[3] Pub. L. No. 106–554, Appendix E, 114 Stat. 2763.

[4] Current CBOE Rule 1.1(ii) defines stock-option order as ''an order to buy or sell a stated number of units of an underlying or a related security coupled with either (a) the purchase or sale of option contract(s) of the same series on the opposite side of the market representing the same number of units of the underlying or related security or (b) the purchase and sale of an equal number of put and call option contracts, each having the same exercise price, expiration date and number of units of the underlying or related security, on the opposite side of the market representing in aggregate twice the number of units of the underlying or related security.''

[5] ISE Rule 722(a)(5)(i) defines a stock-option order as ''an order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock (''convertible security'') coupled with either (A) the purchase or sale of option contract(s) on the opposite side of the market representing either the same number of units of the underlying stock or convertible security or the number of units of the underlying stock necessary to create a delta neutral position; or (B) the purchase or sale of an equal number of put and call option contracts, each having the same exercise price, expiration date, and each representing the same number of units of stock, as and on the opposite side of the market from, the stock or convertible security portion of the order.''

[6] *See* Securities Exchange Act Release No. 46390 (August 21, 2002), 67 FR 55290 (August 28, 2002) (Order Approving SR–ISE–2002–18). *See also* Securities Exchange Act Release No. 48894 (December 8, 2003), 68 FR 70328 (December 17, 2003) (Notice of Filing and Immediate Effectiveness of SR–PCX–2003–42).

[7] The proposed rule change amends Interpretation .04 to CBOE Rule 6.74 to reflect the execution procedures for stock-option orders and security future-option orders provided in proposed CBOE Rule 6.48(b).

executed at the price(s) agreed upon due to market conditions, a trade representing the execution of the options leg of the transaction may be cancelled at the request of any member that is a party to that trade.

CBOE also proposes to amend CBOE Rule 6.9 to permit member solicitation of a security future-option order, and CBOE Rule 27.1, which would create a new definition of a security future-option order with respect to an order involving a Buy-Write Option Unitary Derivative (''BOUND''),[8] as that term is defined in CBOE Rule 27.1(a).[9] The proposed rules also make clear in the text of Interpretation .03 to CBOE Rule 6.74 that as a type of inter-regulatory spread order, a security future-option order may be crossed. A typographical error is also fixed in the text of Interpretation .03 to CBOE Rule 6.74.

2. Statutory Basis

Since the proposed rule change offers execution priorities for certain orders that CBOE believes are of a similar degree of complexity to those approved by the Commission for special priority rules and would offer investors additional opportunities to manage risks while protecting priority of orders of public customers, CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act[10] in general and furthers the objectives of Section 6(b)(5)[11] in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[8] CBOE Rule 27.1(a) defines a BOUND as ''a security issued, or subject to issuance, by The Options Clearing Corporation pursuant to the Rules of The Options Clearing Corporation which gives holders and writers thereof such rights and obligations as may be provided for in the Rules of the Options Clearing Corporation.''

[9] The proposed definition of security future-option order with respect to a BOUND is based on the definition of stock-option order with respect to a BOUND. CBOE Rule 27.1(l) defines stock-option order with respect to a BOUND as ''an order to buy or sell a stated number of units of an underlying or a related security coupled with a transaction in a BOUND contract on the opposite side of the market representing the same number of units of the underlying or a related security.''

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and subparagraph (f)(6) of Rule 19b–4[13] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–CBOE–2004–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2004–14 and should be submitted by April 1, 2004.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] For purposes of calculating the 60-day abrogation date, the Commission considers the 60-day period to have commenced on March 4, 2004, the date CBOE filed Amendment No. 1.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

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BILLING CODE 8010–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49357; File No. SR–CHX–2004–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

March 3, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on January 30, 2004, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On March 2, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule (the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Ellen Neely, Senior Vice President & General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 1, 2004 (''Amendment No. 1''). Amendment No. 1 replaces the proposed rule change in its entirety.

''Fee Schedule''), effective February 1, 2004, to: (1) Reduce the fixed fees for specialists trading both listed and Nasdaq/NM securities; (2) reduce the fixed fee paid by dedicated odd-lot dealers and establish a credit for odd-lot dealers that send round-lot orders to the Exchange for execution; (3) eliminate the charges currently re-billed to the Exchange's floor brokers for NYFIX connectivity; (4) confirm the elimination of the Exchange's marketing fee and establish an increase in the transaction fees charged to CHX market makers; (5) increase, from $10,000 to $12,500, the monthly maximum transaction fee charge for MAX orders sent to CHX specialists; (6) increase, from $1,000 per year to $3,000 per year, the current MAX access charge; (7) extend the existing processing fee to both listed and OTC securities; and (8) make non-substantive changes to the organization of the text.

Below is the text of the proposed rule change. Proposed new language is *italicized;* proposed deletions are in [brackets].

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MEMBERSHIP DUES AND FEES

A. Membership Dues and Transfer Fees

No change to text.

B. Self-Regulatory Organization Fee [1]	$100 per member and member organization per month. *This fee shall not be applicable to memberships to which a nominee has not been assigned and which are not otherwise being used.*

C. Registration Fees

No change to text.

D. Specialist Assignment Fees

No change to text.

E. Specialist Fixed Fees

Except in the case of Exemption Eligible Securities (as defined above in Section D), which shall be exempt from assessment of fixed fees, specialists will be assigned a fixed fee per assigned stock on a monthly basis, to be calculated as follows:

Fixed Fee Per Dual Trading System Security =	$[500,000] *450,000* × Percent of Fixed Costs Per Tier × *(*CTA Trade Volume Per Security/CTA Trade Volume Per Tier*).* (Effective *February 1, 2004* [August 1, 2002]).
Fixed Fee For Specialist Firms Trading Nasdaq/NMS securities =	*The monthly fixed fee charged each member firm for the month of December 2003, less each firm's pro rata share of $39,750. A specialist firm's pro rata share shall be based on the firm's percentage participation in the total fixed fees charged in December 2003. (Effective February 1, 2004).* *The monthly fixed fee will be further reduced to $0, in each month of 2004, if the Exchange's overall share volume in Nasdaq/NM Securities meets the following targets:* *1st Quarter: 40 million average daily shares;* *2nd Quarter: 50 million average daily shares;* *3rd Quarter: 65 million average daily shares;* *4th Quarter: 80 million average daily shares.* [The lowest monthly fixed fee charged each member firm for the period from January through June 2002, less the market data rebate earned by the firm in June, 2002.] [Each specialist firm shall be charged a Fixed Fee Charge equal to that specialist firm's pro rata share of an additional $10,000 monthly fee. A specialist firm's pro rata share shall be based on the firm's percentage participation in the total market data rebates paid to specialist firms trading Nasdaq/NMS Securities in June 2002.]
Fixed Fee Per Dedicated Odd-Lot Dealer	$*200,000* [$250,000]/year*, billed on a monthly* basis (Effective *February 1, 2004* [January 1, 2001])

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F. Transaction and Order Processing Fees

1. SEC Transaction Fees	No change to text.
2. NASD Fees on Cleared Transactions	No change to text.
3. Order Processing Fees	No change to text.
4. Transaction Fees	
a. No change to text.	
b. No change to text.	
c. No change to text.	
d. *Executions by market makers* [Reserved for future use.]	*$.0050 per share (up to a maximum of $100 per side), subject to the fee reduction described in (i), below and the fee cap described in (j) below. (Effective February 1, 2004)*

MEMBERSHIP DUES AND FEES—Continued

e. In Nasdaq/NM securities, agency executions executed through a floor broker [and market maker executions].	$.0025 per share (up to a maximum of $100 per side), subject to the fee reduction described in (i), below and the fee cap described in (j) below.
f. In Dual Trading System issues, agency executions executed through a floor broker [and market maker executions].	$.0035 per share (up to a maximum of $100 per side), subject to the fee reduction described in (i), below and. the fee cap described in (j) below.

g. No change to text.

h. The monthly maximum for transaction fees for orders sent via MAX, except agency orders executed through floor brokers, is [$10,000] *$12,500* or, if less, $.40 per 100 average monthly gross round lot shares. *(Effective February 1, 2004)*

i. Effective August 1, 2003, the per-share fees described in *(d)*, (e) and (f) above will be reduced on shares traded above a total monthly charge of $150,000 (within each section) as follows:

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j. The transaction fees set forth in Sections F.4*(d),* (e) and (f) shall be subject to the following monthly maximums:

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k. No change to text.

5. Floor Broker as Principal Fees	No change to text.

[6. Marketing Fees]

[(a) A marketing fee of $.01 per share shall be assessed for each Subject Transaction in a Subject Issue occurring on or before December 31, 2003; *provided, however,* that a specialist who trades a Subject Issue may elect to decline imposition of the marketing fee.]

[''Subject Issue'' shall mean any issue which constitutes an exchange-traded fund and meets the following two criteria: (a) Average daily share volume in the issue exceeds 150,000 shares each month during a consecutive two month period; and (b) market maker share participation in the same issue exceeds 1% for each month during the same two-month period.]

[''Subject Transaction'' shall mean (a) any trade with a customer, whether the contra party is a specialist or a market maker, where the order is delivered to the Exchange via the MAX system or where compensation is paid to induce the routing of the order to the Exchange; or (b) any trade between a specialist and a market maker in which the market maker is exercising rights under the market maker entitlement rules, in which case the marketing fee shall be assessed against the market maker only.]

[(b) The marketing fee assessed and collected by the Exchange shall be remitted to the specialist trading the Subject Issue. To the extent that all marketing fees collected during a three-month period are not expended by the specialist during such period, the Exchange shall refund any remaining marketing fees to the payors *pro rata* in proportion to the marketing fees paid by such payors; *provided, however,* that the Exchange shall not be obligated to refund amounts of $1000 or less.]

G. Space Charges

No change to text.

H. Equipment, Information Services and Technology Charges

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[NYFIX Network and Connection Charges]	[All NYFIX charges above $15,000 per month will be rebilled monthly to member firms that access the NYFIX network, based on the proportion of each firm's use of the network during the month.]

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MAX Access Charge	$[1,000]*3,000* per access point, allocated pro rata among the firms that gain access to the Exchange's MAX system through that access point. *(Effective February 1, 2004)*
OTC Access and Connection Charges	No change to text.

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I. Clearing Support Fees

(minimum clearing support fee is $600 per month)

1. Account Fee

No change to text.

2. CUSIP Fees

Specialist OTC CUSIP Fee	$50 per OTC CUSIP per month
Market Maker CUSIP Fee	$10 per CUSIP per month
Odd-Lot Dealer CUSIP Fee[2]	$2.50 per CUSIP per month
Floor Broker as Principal	$2 per CUSIP per month

The above Specialist OTC CUSIP Fee will be subject to the following discounts:

If between 20 and 200 trades occur in a particular CUSIP in a given month, the Specialist OTC CUSIP Fee for that CUSIP shall be $40 for that month.

MEMBERSHIP DUES AND FEES—Continued

If less than 20 trades occur in a particular CUSIP in a given month, the Specialist OTC CUSIP Fee for that CUSIP shall be $20 for that month.

The Odd Lot Dealer CUSIP fee does not apply to any issue in which the odd-lot dealer is also the specialist for the issue.

3. Processing Fees

Transactions [in OTC securities] that are executed by floor brokers in securities that are not *listed or traded UTP on the Exchange* [assessed a Specialist OTC CUSIP Fee] but are processed by the Exchange's clearing systems.	$.0015/share, up to $100 per side.

J. Listing Fees

No change to text.

K. Market Regulation and Market Surveillance Fees

No change to text.

L. Supplies and Reports

No change to text.

M. Credits

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4. Credits for Dedicated Odd-Lot Dealers

Total monthly fees owed by a Dedicated Odd-Lot Dealer will be reduced (and these odd-lot dealers will be paid each month for any unused credits) by a credit of $.08 per round-lot trade sent by the Dedicated Odd-Lot Dealer to Exchange specialists for execution.

[[1] This fee shall not be applicable to memberships to which a nominee has not been assigned and which are not otherwise being used.]

[[2] The Odd Lot Dealer CUSIP fee does not apply to any issue in which the odd-lot dealer is also the specialist for the issue.]

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

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A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule, effective February 1, 2004. These fee changes would be part of the CHX's 2004 budget. The Exchange proposes to reduce the fees charged to the Exchange's specialists, floor brokers and odd-lot dealers.[4] Specifically, the Exchange seeks to reduce the total fixed fee charged specialists trading listed securities by $50,000 per month, and also proposes a reduction of approximately $40,000 in the monthly fixed fee charged to specialists trading Nasdaq/NM securities,[5] with an opportunity for the fee to be reduced to $0 for each month if the Exchange's overall share volume in Nasdaq/NM securities reaches specific targets.[6] The Exchange also proposes a $50,000 reduction in the annual dedicated odd-lot dealer fee and a corresponding credit of $.08 per round-lot trade for orders that these odd-lot dealers send to Exchange specialists for execution. Finally, the Exchange proposes to eliminate the current re-billing, to floor brokers, of certain charges relating to the use of the NYFIX network. According to the Exchange, these fee reductions and credits are designed to allow the Exchange to continue to remain competitive in its efforts to provide an efficient floor-based venue for its members to act as specialists, floor brokers and odd-lot dealers.

Another proposed change to the Fee Schedule confirms the elimination of the Exchange's marketing fee and an increase, from $.0035 per share to $.0050 per share, of the transaction fees charged to the Exchange's market makers.[7] The Exchange first imposed a marketing fee in 2001, to ensure that all members that trade particular securities share, with CHX specialist firms, the

[4] *See* CHX Fee Schedule, Section E and Section H.

[5] Under the proposed schedule, the fixed fee for specialists trading Nasdaq/NM securities is based on the fixed fee charged for the month of December 2003. This fixed fee used to be based on the lowest fixed fee charged for the period from January through June 2002, less the market data rebate earned by the firm in June 2002. Prior to July 2002, the fixed fee for specialists trading Nasdaq/NM securities was calculated much as the fixed fee is currently calculated for specialists trading listed securities—the total fixed fee was divided among specialist firms based on how active their assigned stocks were in the market as a whole. The Exchange and its OTC specialist firms believed that it was appropriate, in July 2002, to move to a constant fixed fee for OTC specialist firms and is simply continuing that notion under the proposed fee schedule, with updated text. See Securities Exchange Act Release No. 46491 (September 11, 2002), 67 FR 58831 (September 18, 2002).

[6] Under the proposal, the monthly fixed fee would be reduced to $0 for all specialists trading Nasdaq/NM securities for each month if the Exchange's overall share volume in those securities reaches the following targets: 40 million average daily shares (in the first quarter of 2004); 50 million average daily shares (in the second quarter of 2004); 65 million average daily shares (in the third quarter of 2004); and 80 million average daily are shares (in the fourth quarter of 2004). *See* Fee Schedule, Section E. The Exchange believes that it is appropriate to base a specialist reduction in this fixed fee on the total number of shares traded in Nasdaq/NM securities on the Exchange, whether the shares are executed by a specialist or floor broker, for two primary reasons: (1) To reward the specialists assigned to these securities, who typically participate in the execution of a majority of the trades and shares executed on the Exchange in Nasdaq/NM securities (*e.g.*, 78.3% of the shares executed in these securities in 2003); and (2) to create an incentive for specialists to continue to maintain their assignments in Nasdaq/NM securities, because trades in these securities can currently be executed on the Exchange only if the securities are assigned to a specialist. The Exchange believes it is important to provide these awards and incentives to specialists to ensure the viability of its OTC program, which the Exchange has seen some recent declines in trading volume.

[7] These transaction fees are subject to a maximum of $100 per side and are subject to other reductions and caps set out in the Exchange's Fee Schedule. *See* Fee Schedule, Section F.(4)(d).

costs associated with attracting order flow to the Exchange, as well as the license fees assessed by the owners of trademarks associated with certain exchange-traded funds (''ETFs'').[8] Because the Exchange now believes that this fee is no longer necessary to help specialists attract order flow to the Exchange, and because the Exchange has now taken on the responsibility for paying any ETF license fees, the Exchange allowed the marketing fee to expire on December 31, 2003, and now proposes to delete that provision from the Fee Schedule. At the same time, the Exchange believes that it is appropriate to increase the transaction fees charged to the Exchange's market makers to help the Exchange defray the costs associated with its market maker-related regulatory activities and the costs associated with any license fees that the Exchange is now responsible for paying.[9]

The CHX also proposes to make changes to the Exchange's Fee Schedule to increase, from $10,000 to $12,500, the monthly transaction fee cap on the execution of orders sent through the Exchange's MAX system to specialists; increase, from $1,000 to $3,000, the annual MAX access charge assessed to firms that gain access to the Exchange's MAX system; and extend, to listed securities, the Exchange's processing fees that are currently charged only for transactions executed by floor brokers in Nasdaq/NM securities that are not traded on the Exchange's floor.[10] The Exchange believes that these fee changes are designed to ensure that the Exchange's costs of providing systems and services are appropriately allocated among its members. For example, by increasing the monthly transaction fee cap on orders sent through the Exchange's MAX system to specialists and increasing the MAX system access charge—fees that are paid by the Exchange's order-sending firms—the Exchange can ensure that its order-sending firms pay an appropriate, but still competitive, level of fees to help cover the costs associated with their transactions on the Exchange (or associated with their access to the Exchange).[11] The Exchange also believes that by extending the Exchange's processing fees to listed securities, the CHX ensures that these transactions are assessed an appropriate fee to help cover the costs associated with the back-office work provided by the Exchange.[12]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the provisions of section 6(b) of the Act,[13] in general, and section 6(b)(4) of the Act,[14] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received with respect to the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A)(ii)[15] of the Act, and Rule 19b–4(f)(2)[16] thereunder, because it establishes or changes a due, fee or other charge imposed by the Exchange. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–CHX–2004–09. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference

[8] *See* Securities Exchange Act Release No. 44646 (August 2, 2001), 66 FR 41641 (August 8, 2001) (announcing immediate effectiveness of the new marketing fee provision to the CHX Fee Schedule, through December 31, 2001).

[9] With respect to the Exchange's costs associated with market maker surveillance and licenses fees, market makers, on the CHX, primarily trade for their own proprietary accounts. According to the Exchange, market makers are required to effect transactions so that they constitute a course of dealings reasonably calculated to contribute to the maintence of a fair and orderly market, and must make a market when requested by a floor broker, but have a few other affirmative obligations to contribute to the Exchange's market. *See* CHX Article XXXIV. The Exchange conducts surveillance of market maker trading activity, reviewing, among other things, compliance with the short sale rule's tick test and marking requirements. When the Exchange is the designated examining authority for a firm with a market maker account, it also conducts periodic examinations to assess compliance with other Commission and CHX rules. According to the Exchange, to the extent that these firms operate from the CHX trading floor, they do not currently pay any market regulation or market surveillance fees associated with those routine examinations. *See* Fee Schedule, Section K, including footnote 3.

[10] According to the Exchange, the proposed rule change to Sections B. and I.(2) of the Fee Schedule move text from footnotes to the primary text of each section to ensure that the information is more understandable.

[11] Specifically, the Exchange believes that these fees help defray the costs, among other things, of maintaining and upgrading the Exchange's MAX system. This system, and other, interrelated functionalities, are used to handle orders sent to the Exchange. Among other things, they record the receipt of orders, route those orders to specialists (or where selected by the order-sending firm, to a floor broker representative) for handling and, for eligible orders, provide automatic executions.

[12] According to the Exchange, the transactions that are assessed this clearing processing fee are transactions in securities that are not listed or traded pursuant to unlisted trading privileges on the Exchange. If one of the Exchange's members, who is also a member of another Exchange or Nasdaq, effects a trade on that other market, the member can report the trade to the other Exchange or Nasdaq (without sending it to clearing) and then enter the transaction into the Exchange's back-office clearing systems to ensure that that transaction is included in the Exchange's clearing report. Information about that transaction then appears in the reports prepared by the Exchange for member firm use.

[13] 15 U.S.C. 78(f)(b).

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(2).

[17] *See* 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence March 2, 2004 the date the CHX filed Amendment No. 1.

Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–CHX–2004–09 and should be submitted by April 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–5549 Filed 3–10–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49363; File No. SR–FICC–2004–03]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting the Government Securities Division's Late Trade Data Submission Fine and Amending the Government Securities Division's Clearing Fund Rule

March 4, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 19, 2004, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to (i) delete the Late Trade Data Submission Fine from the rules of the Government Securities Division (''GSD'') and (ii) amend GSD's clearing fund rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Late Trade Data Submission Fine Deletion

On November 14, 2001, the Government Securities Clearing Corporation (''GSCC''), FICC's predecessor, received Commission approval to fine members for submitting trade data after GSCC's 8:00 p.m. (New York time) trade data submission deadline.[3] The fine schedule was originally drafted and approved when many members were still submitting trade data in single batches at the end of the business day. GSCC did not implement the fine schedule because at the time of approval a majority of its members had begun submitting trade data in real-time. The fine schedule is no longer necessary, and FICC desires to delete it from GSD's rules.

Clearing Fund Rule Amendment

On July 21, 2003, FICC received Commission approval to reduce the permitted use of letters of credit from 70 percent to 25 percent of a GSD member's required clearing fund deposit.[4] The reference to ''70'' percent in Rule 4, Section 4 was amended in the approved filing, and FICC is seeking to amend the other reference to ''70'' percent in Rule 4, Section 10 that was inadvertently overlooked.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change relating to the deleted fine has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and Rule 19b–4(f)(2)[6] thereunder because the proposed rule establishes or changes a due, fee, or other charge. The foregoing rule change relating to the amended clearing fund rule has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(4)[8] thereunder because the proposed rule change effects a change in an existing service of FICC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of FICC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of FICC or its members using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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–FICC–2004–03. 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 either 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

[18] 17 CFR.200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by FICC.

[3] Securities Exchange Act Release No. 45053 (November 14, 2001), 66 FR 58771 [File No. SR–GSCC–00–09].

[4] Securities Exchange Act Release No. 48200 (July 21, 2003), 68 FR 44130 [File No. SR–GSCC–2002–11].

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(4).

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.ficc.com/gov/gov.docs.jsp?NS-query=*. All submissions should refer to File No. SR–FICC–2004–03 and should be submitted by April 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–5552 Filed 3–10–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49368; File No. SR–MSRB–2004–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rules G–37, on Political Contributions and Prohibitions on Municipal Securities Business, and G–38, on Consultants

March 5, 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 25, 2004, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the SEC a proposed rule change consisting of a notice of interpretation concerning Rules G–37, on political contributions and prohibitions on municipal securities business, and G–38, on consultants. The text of the proposed rule change is set forth below.

* * * * *

Questions and Answers: Rule G–37

1.

Q. Are dealers required to identify the type of contributor (*i.e.* dealer, dealer controlled PAC, MFP, MFP controlled PAC, or non-MFP executive officer) when completing Form G–37/G–38?

A. Yes. Rule G–37 (e)(i)(2) requires dealers to report to the Board on its Form G–37/G–38 the contribution or payment amount made *and* the contributor category of each of the following persons and entities making such contributions or payments during each calendar quarter: the broker, dealer or municipal securities dealer; each municipal finance professional; each non-MFP executive officer; and each political action committee controlled by the broker, dealer or municipal securities dealer or by any municipal finance professional. It is not sufficient to list contributors as ''employee'' or ''registered representative.'' For each contribution listed on the Form G–37/G–38, one of the specified contributor categories must be identified.

2.

Q. How should contributions to officials of issuers who are seeking federal office be reported on Form G–37/G–38?

A. Under Rule G–37, contributions given to officials of issuers who are seeking election to federal office, such as the U.S. House of Representatives, Senate or the Presidency, must be reported on the dealer's quarterly Form G–37/G–38 unless they meet the *de minimis* exception. When reporting these contributions, dealers must report information identifying the issuer official. Firms may additionally report information identifying the federal office sought. For example, if a sitting Governor of a state were running for a seat in the U.S. House of Representatives, and the Governor is an ''official of an issuer,'' the form must list the state where the official is serving as Governor, and the Governor's complete name and title. Dealers may also report the federal office sought by the issuer official.

Questions and Answers: Rule G–38

1.

Q: Pursuant to Rule G–38, what information is a dealer required to disclose regarding money paid to its consultants?

A: Rule G–38 requires that dealers disclose information relating to money paid to consultants in three separate areas on Form G–37/G–38. These disclosures relate to the consultant's compensation arrangement, dollar amounts paid to the consultant in connection with specific municipal securities business, and the total dollar amount paid to the consultant during the reporting period.

Dealers should describe their consultants' ''compensation arrangements'' clearly and with as much specificity as possible. The arrangement should correlate with the information reported on the form concerning the ''total dollar amount paid'' to the consultant during the reporting period. It is not sufficient to disclose a compensation arrangement in vague or generalized terms, such as ''a monthly retainer not related to any specific transaction,'' ''a percentage of net revenues received for transactions with xyz issuer,'' or ''a percentage of management fees and takedown from specified transactions.'' Dealers must report information on their consultants' compensation arrangements with specificity, for example, by providing the dollar amount of the monthly retainer or the numeric formulations used to calculate compensation. Dealers should also provide the dollar amount or numeric formulations used to calculate success fees, discretionary bonuses, and similar payments made or to be made to consultants. For example, it is not sufficient to report that a discretionary bonus or success fee will be ''equal to a percentage of the net investment banking fees received on certain transactions.'' Rather, the dealer should disclose the fee or payment as a *specific* (numeric) percentage of profits.

Dealers also are required to disclose on Form G–37/G–38 information relating to ''municipal securities business obtained or retained'' by the consultant. This section of the form requires the dealer to list each item of business separately and, if applicable, to indicate the dollar amount paid to the consultant in connection with each item of municipal securities business listed. Dealers are reminded to list the relevant municipal securities business obtained or retained in this section of Form G–37/G–38 even if payments were not paid to the consultant in connection with the listed municipal securities business during that quarter.

Finally, dealers are required to disclose on Form G–37/G–38 information relating to ''total dollar amounts paid to the consultant during the reporting period.'' The dealer must report the cumulative total of *all* payments made to its consultant during the particular quarter. Such payments include compensation paid for that quarter (including reimbursed expenses)

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and the total dollar amounts paid, if any, in connection with particular municipal securities business (including discretionary bonuses, success fees or similar payments). The dealer also should report any payments made to its consultant even if such payments were *not* made in connection with a particular item of municipal securities business.

For additional guidance in this area, please review Q&A number 2 (dated November 18, 1996) in the MSRB Rule Book following Rule G–38; this Q&A can also be found on the MSRB's Web site at *http://www.msrb.org/msrb1/rules/notg38.htm.*

2.

Q: If a consultant obtains municipal securities business in one quarter, and the dealer pays the consultant in connection with that business during a subsequent quarter, how should the dealer disclose this information on its Form G–37/G–38?

A: The dealer should disclose on its Form G–37/G–38 in the ''municipal securities business obtained or retained'' section the municipal securities business obtained or retained by its consultant during the relevant quarter whether or not payments connected with that business were made during that quarter. If the dealer subsequently makes a payment to the consultant in connection with that particular business, the dealer should disclose that payment in the ''municipal securities business obtained or retained'' section for the quarter in which such payment was made and should indicate in this section that the business was previously disclosed and the quarter for which it was disclosed (*e.g.*, second quarter 2003). For additional guidance, please review Q&A number 14 (dated February 28, 1996) in the MSRB Rule Book following Rule G–38; this Q&A can also be found on the MSRB's website at *http://www.msrb.org/msrb1/rules/notg38.htm.*

3.

Q: If a dealer has a continuing relationship with a consultant, is the dealer required to list the consultant on its Form G–37/G–38 for each quarterly reporting period even if the dealer did not pay the consultant any compensation and/or the consultant did not undertake any affirmative efforts on behalf of the dealer to obtain or retain municipal securities business during that quarter?

A: Yes, the dealer must continue to list the consultant and disclose the required consultant information for each quarterly reporting period during which there is a continuing relationship even if the consultant received no compensation or other payment from the dealer, and even if the consultant did not undertake any affirmative efforts on behalf of the dealer to obtain or retain municipal securities business.

4.

Q: Under the section of Form G–37/G–38 entitled ''Role to be Performed by Consultant,'' is a dealer required to list the geographic area or areas where the consultant is working on the dealer's behalf?

A: Yes, the dealer must specifically list each state or geographic area where the consultant is working on behalf of the dealer. For additional guidance in this area, please review Q&A number 1 (dated November 18, 1996) in the MSRB Rule Book following Rule G–38; this Q&A can also be found on the MSRB's Web site at *http://www.msrb.org/msrb1/rules/notg38.htm.*

* * * * *

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 MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB 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

In reviewing the Forms G–37/G–38 submitted by brokers, dealers and municipal securities dealers (collectively ''dealers''), the MSRB has found that some dealers are not providing the level of detail in the information they disclose as required by Rules G–37 and G–38.

With respect to Rule G–37, some dealers are not correctly identifying the category of contributor on Form G–37/G–38. For example, some dealers will note that an ''employee'' made a contribution instead of a municipal finance professional (''MFP'') or non-MFP executive officer. Also, in some instances where an issuer official is running for federal office (*e.g.*, a state governor running for a seat in the U.S. House of Representatives), firms sometimes note the federal race but not the fact that the candidate currently is an issuer official. The proposed rule change reminds dealers that Rule G–37 requires identification of the contributor category when listing contributions and clarifies how to correctly identify to whom the contribution is made when contributing to issuer officials running for Federal office.

With respect to Rule G–38, the MSRB believes that dealers should be describing their consultants' compensation arrangements and other payments in clear and unequivocal terms, with as much specificity as possible; providing vague or generalized descriptions is not sufficient and does not provide any means to ascertain the dollar amounts paid to consultants. Dealers must provide specific dollar amounts or the specific percentage of formulations used to calculate success fees, discretionary bonuses, and similar payments made or to be made to consultants. In addition, Rule G–38 requires that dealers disclose the state or geographic area where the consultant is working on behalf of the dealer. The proposed rule change clarifies dealers' disclosure obligations concerning, among other things, compensation arrangements with consultants, payments made to consultants that are connected to specific municipal securities business, total quarterly payments made to consultants, and specific geographic areas where a consultant is working on behalf of a dealer.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Act,[3] which authorizes the MSRB to adopt rules that shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act in that it provides guidance to dealers that will facilitate their understanding of, and compliance with, existing MSRB rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any

[3] 15 U.S.C. 78o–4(b)(2)(C).

burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The MSRB has designated this proposed rule change as constituting a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing MSRB rule under Section 19(b)(3)(A) of the Act,[4] which renders the proposed rule change effective upon filing with the Commission.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[5]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–MSRB–2004–01. 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 MSRB's offices. All submissions should refer to file number SR–MSRB–2004–01 and should be submitted by April 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–5551 Filed 3–10–04; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78s(b)(3)(A).

[5] *See* 15 U.S.C. 78s(b)(3)(C).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49362; File No. SR–Phlx–2004–15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Modifications to the Fee Schedule To Delete Obsolete Fees and Clarify Language

March 4, 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 13, 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, which Items have been prepared by the Phlx. On February 27, 2004, the Phlx amended its proposal.[3] The Exchange filed the proposed rule change under paragraph (f)(2) of Rule 19b–4 under the Act.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees and charges (''fee schedule''), as described in detail below, to more accurately reflect charges that are currently imposed by the Exchange on its members. No new dues, fees and charges are being imposed pursuant to this proposed rule change.

The Exchange proposes to delete in their entirety, all charges relating to: (1) ''Summary of Value Line Index Option Charges'' and (2) the ''eVWAP Fee Schedule.'' Additionally, the Exchange proposes to delete from Appendix A of its fee schedule references to the ''Option Mailgram Service'' and ''Quotron Equipment.'' The Phlx also proposed to revise the ''Summary of Equity Charges'' portion of the fee schedule. The proposed rule change would delete the reference to ''Remaining shares, $0.004'' that appears on the last line under the Equity Transaction Charge and, instead, the term ''Remaining shares'' will replace the language that appeared on the transaction fee line that read ''Next 7,500.''[5] The Phlx would make this change to indicate that all remaining shares that are not subject to the $0.0075 equity transaction charge are subject to the $0.005 equity transaction charge, subject to the $50 maximum. The text of the proposed rule change, as amended, is available at the Phlx 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 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 IV 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 make minor modifications to the Exchange's fee schedule to more accurately reflect the charges currently imposed by the Exchange and delete obsolete fees. Both the ''Option Mailgram Service'' fee and the ''Quotron Equipment'' fee are no longer charged by the Exchange; this service and equipment are no longer offered. In addition, eVWAP and Value Line Index

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Angela Saccomandi Dunn, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated February 26, 2004 (''Amendment No. 1''). In Amendment No. 1, Phlx replaced Exhibit 2 to its Form 19b–4.

[4] 17 CFR 240.19b–4(f)(2).

[5] Applying the amount of $0.004 to the remaining shares is unnecessary, because the $50.00 maximum fee per trade side is reached before the $0.004 can apply.

Option products, are no longer offered at the Exchange. Also, a minor modification to the reference to ''Remaining Shares'' that appears on the ''Summary of Equity Charges,'' under the ''Equity Transaction Charge'' section, will eliminate unnecessary language.[6]

By removing and clarifying the aforementioned portions of the Exchange's fee schedule, as described in detail above, the Exchange believes that its fee schedule will be more accurate and clear, and minimize member confusion.

2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with section 6(b) of the Act[7] in general, and furthers the objectives of section 6(b)(4) of the Act[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments on the proposed rule change were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2)[10] thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[6] *See supra* note 3.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments-@sec.gov.* All comment letters should refer to File No. SR–Phlx–2004–15. 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 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 Phlx.

All submissions should refer to File No. SR–Phlx–2004–15 and should be submitted by April 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–5424 Filed 3–10–04; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49365; File No. SR–Phlx–2004–18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Make Permanent a Pilot Program Relating to the Book Sweep Function of the Exchange's Automated Options Market System

March 4, 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 March 1, 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, 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt, on a permanent basis, Rule 1080(c)(iii) concerning a feature of the Exchange's Automated Options Market (''AUTOM'') System,[3] designed to automatically execute limit orders on the book when the specialist's quotation locks or crosses a limit order on the book, thus rendering such limit order marketable. This feature, called ''Book Sweep,'' is currently operating as a six-month pilot.[4] The text of the proposed rule change is available at the principal offices of the Phlx and at the Commission. The proposed rule change does not alter the text of the pilot language in Rule 1080(c)(iii), but simply makes permanent Rule 1080(c)(iii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 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 features. 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.

[4] In September, 2003, the Commission approved the Exchange's Book Sweep proposal on a six-month pilot basis. *See* Securities Exchange Act Release No. 48563 (September 29, 2003), 68 FR 57724 (October 6, 2003) (SR–Phlx–2003–30).

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 further automate options order handling by adopting, on a permanent basis, a current pilot enhancement to the Exchange's AUTOM system, called Book Sweep, that allows certain orders resting on the limit order book[5] to be automatically executed in the situation where the bid or offer generated by the Exchange's Auto-Quote[6] system (or by a proprietary quoting system called ''Specialized Quote Feed'' or ''SQF'')[7] locks (*i.e.*, $1.00 bid, $1.00 offer) or crosses (*i.e.*, $1.05 bid, $1.00 offer) the Exchange's best bid or offer in a particular series as established by an order on the limit order book. Orders executed by the Book Sweep feature are allocated among crowd participants participating on the Wheel.[8]

The Exchange believes that the Book Sweep feature provides for more timely and efficient executions of marketable limit orders on the limit order book. Prior to the deployment of Book Sweep, when the Auto-Quote or SQF bid or offer locked or crossed a booked order, the specialist handled the execution manually after being alerted by the system that one or more limit orders on the book have become marketable and are due an execution. This situation could occur for several series in the same option, which prior to the deployment of Book Sweep required multiple executions of booked limit orders in each such series to be carried out by the specialist. Book Sweep automates the execution of such orders.

Book Sweep Size

Book Sweep automatically executes a number of contracts not to exceed the size associated with the quotation that locks or crosses a limit order on the book. The purpose of this provision is to make automatic executions in the Book Sweep function consistent with the Exchange's rules relating to AUTO-X, the automatic execution feature of AUTOM. The Exchange no longer has an artificial ''AUTO-X guarantee'' applicable to an option. Instead, the Exchange currently provides automatic executions for eligible orders[9] delivered via AUTOM at the Exchange's disseminated price, up to the disseminated size, for both customer and broker-dealer orders.[10] Because the Exchange's disseminated size (and thus its guaranteed AUTO-X size) is dependent on the size displayed when an order is received, and thus is fluid, in order to achieve consistency, the number of contracts to be executed via Book Sweep is equal to the size associated with the quote that locks or crosses the limit order on the book.

When a quotation is generated by Auto-Quote or SQF locks or crosses a limit order on the book, there are three possible scenarios that may occur. First, if such a quotation is for a number of contracts that is equal to the size associated with the limit order on the book, the entire limit order would be executed. For example, if a limit order is resting on the book with a size of 200 contracts, and the size associated with the quotation that locks or crosses such a limit order is 200 contracts, the entire limit order on the book would be executed, and Auto-Quote or SQF would thereafter refresh the quotation (including the size associated with such a quotation).

The second possible scenario is that the size associated with a quotation that locks or crosses a limit order on the book could be for a greater number of contracts than the size associated with the booked limit order. In such a situation, the entire size of the limit order would be executed. For example, if a limit order is resting on the book with a size of 200 contracts, and size associated with the quotation that locks or crosses such a limit order is 300 contracts, the entire limit order would be executed. Following the execution, Auto-Quote or SQF would thereafter refresh the quotation (including the size associated with such a quotation).

The third possible scenario is that the size associated with the quote that locks or crosses a limit order on the book would be for fewer contracts than the size associated with the booked limit order. In this situation, the limit order would be partially executed automatically at the size associated with the quote that locks or crosses the limit order,[11] and Auto-Quote or SQF would refresh the quotation. For example, if a limit order is resting on the book with a size of 200 contracts, and the size associated with the quote that locks or crosses such a limit order is 100 contracts, Book Sweep would generate an automatic execution for 100 contracts, leaving 100 contracts resting on the limit order book, and Auto-Quote or SQF would refresh the quote. If the refreshed quote locks or crosses the remaining contracts in the limit order resting on the book, Book Sweep would initiate another automatic execution for the size associated with the refreshed quote. If the refreshed bid or offer is for a price that is inferior to the remaining contracts in the limit order on the book, such that the limit order represents the Exchange's best bid or offer, the price and size of the limit order would be disseminated by the Exchange. If the refreshed bid or offer is for a price that is superior to the price of the remaining limit order, the Exchange would disseminate the refreshed bid or offer, and the remaining limit order would rest on the limit order book until it becomes due for execution or is cancelled.

Manual Book Sweep

Book Sweep would be engaged when AUTO–X is engaged, and would be disengaged when AUTO-X is disengaged.[12] However, the Exchange

[5] The electronic ''limit order book'' is the Exchange's automated specialist limit order book, which automatically routes all unexecuted AUTOM orders to the book and displays orders real-time in order of price-time priority. Orders not delivered through AUTOM may also be entered onto the limit order book. *See* Exchange Rule 1080, Commentary .02.

[6] Auto-Quote is the Exchange's electronic options pricing system, which enables specialists to automatically monitor and instantly update quotations. *See* Exchange Rule 1080, Commentary .01(a).

[7] *See* Exchange Rule 1080, Commentary .01(b)(i).

[8] The ''Wheel'' is a feature of AUTOM that allocates contra-party participation respecting automatically executed trades among the specialist and Registered Options Traders (''ROTs'') signed onto the Wheel for that listed option. *See* Exchange Rule 1080(g). *See also* Option Floor Procedure Advice (''OFPA'') F–24.

[9] For a list of circumstances in which orders otherwise eligible for AUTO–X are instead manually handled by the specialist, *see* Exchange Rule 1080(c)(iv). *See also* Securities Exchange Act Release No. 45927 (May 15, 2002), 67 FR 36289 (May 23, 2002) (SR–Phlx–2001–24).

[10] *See* Securities Exchange Act Release No. 47646 (April 8, 2003), 68 FR 17976 (April 14, 2003) (SR–Phlx–2003–18).

[11] Exchange Rule 1082(b) provides that all quotations made available by the Exchange and displayed by quotation vendors shall be firm for customer and broker-dealer orders at the disseminated price in an amount up to the disseminated size. *See also* Rule 11Ac1–1 under the Act, 17 CFR 240.11Ac1–1.

[12] Exchange Rule 1080(c)(iv) provides that an order otherwise eligible for AUTO-X will instead be manually handled by the specialist in the following situations:

(A) The Exchange's disseminated market is crossed (*i.e.*, 2.10 bid, 2 offer), or crosses the disseminated market of another options exchange;

(B) One of the following order types: stop, stop limit, market on closing, market on opening, or an all-or-none order where the full size of the order cannot be executed;

(C) The AUTOM System is not open for trading when the order is received (which is known as a pre-market order);

(D) The disseminated market is produced during an opening or other rotation;

(E) When the specialist posts a bid or offer that is better than the specialist's own bid or offer

Continued

proposes to allow specialists to engage Book Sweep manually when orders are received when AUTO-X is disengaged, and Auto-Quote or SQF matches or crosses the Exchange's best bid or offer in a particular series as established by an order on the limit order book. The purpose of this provision is to enable the specialist to execute limit orders on the book that are due for execution more efficiently by manually initiating Book Sweep (rather than executing such orders individually), thus providing more efficient executions and ensuring that the specialist may maintain a fair and orderly market when such orders become due for execution.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [13] in general, and furthers the objectives of Section 6(b)(5) of the Act [14] in particular, in that it is designed to perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest. The Exchange believes that Book Sweep helps provide faster executions for investors, while reducing the burden on the Exchange's specialists with respect to the manual execution of booked orders.

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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed 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–Phlx–2004–18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2004–18 and should be submitted by April 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–5548 Filed 3–10–04; 8:45 am]

BILLING CODE 8010–01–P

(except with respect to orders eligible for ''Book Match'' as described in Rule 1080(g));

(F) If the NBBO Feature, described in Exchange Rule 1080(c)(i), is not engaged, and the Exchange's bid or offer is not the NBBO;

(G) When the price of a limit order is not in the appropriate minimum trading increment pursuant to Rule 1034;

(H) When the bid price is zero respecting sell orders; and

(I) When the number of contracts automatically executed within a 15 second period in an option (subject to a pilot program until November 30, 2004) exceeds the specified disengagement size, a 30 second period ensues during which subsequent orders are handled manually.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

The Ticket to Work and Work Incentives Advisory Panel Teleconference

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Teleconference.

DATE: Monday, March 15, 2004.

TELECONFERENCE: Monday March 15, 2004, 1:30 p.m. to 3:30 p.m. Eastern time.

Ticket to Work and Work Incentives Advisory Panel Conference Call

Call-in number: 1–888–459–7564.
Pass code: PANEL.
Leader/Host: Sarah Wiggins Mitchell.

SUPPLEMENTARY INFORMATION:

Type of meeting: This teleconference meeting is open to the public. The interested public is invited to participate by calling into the teleconference at the number listed above. Public testimony will not be taken.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces this teleconference meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of Pub. L. 106–170 establishes the Panel to advise the President, the Congress and the Commissioner of SSA on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the Ticket to Work and Work Incentives Advisory Act (TWWIIA). The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Agenda: The Panel will be discussing its Annual Report to the President and Congress. The agenda for this meeting will be posted on the Internet at *http://www.socialsecurity.gov/work/panel* one week prior to the teleconference or can be received in advance electronically or by fax upon request.

Contact Information: Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff by:

- Mail addressed to Ticket to Work and Work Incentives Advisory Panel Staff, Social Security Administration,

400 Virginia Avenue, SW., Suite 700, Washington, DC 20024;

- Telephone contact with Monique Fisher (202) 358–6435;
- Fax at (202) 358–6440; or
- E-mail to *TWWIIAPanel@ssa.gov.*

Dated: March 4, 2004.

Carol Brenner,

Designated Federal Official.

[FR Doc. 04–5624 Filed 3–10–04; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; New System of Records and New Routine Use Disclosures

AGENCY: Social Security Administration (SSA).

ACTION: Proposed new routine use for existing systems of records.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (11)), we are issuing public notice of our intent to establish a new routine use disclosure applicable to the following existing SSA systems of records:

- Completed Determination Record—Continuing Disability Determinations, 60–0050;
- Master Files of Social Security Number (SSN) Holders and SSN Applications, 60–0058;
- Master Beneficiary Record, 60–0090;
- Supplemental Security Income Record and Special Veterans Benefits, 60–0103;
- Old Age, Survivors and Disability Beneficiary and Worker Records and Extracts (Statistics), 60–0202; and
- Beneficiary, Family and Household Surveys, Records and Extracts System (Statistics), 60–0211.

The proposed routine use will allow SSA to expand the use of information SSA currently collects for additional SSA-approved research studies. Such further uses will permit the development of richer and more comprehensive information that can be used in actuarial, epidemiological, economic and other social science projects that will ultimately benefit the public, SSA, and other Federal, State or congressional support agencies' (*e.g.*, Congressional Budget Office (CBO) and the Congressional Research Staff in the Library of Congress) programs. We invite public comment on this proposal.

DATES: We filed a report of the proposed new routine use disclosure with the Chairman of the Senate Committee on Governmental Affairs, the Chairman of the House Committee on Government Reform, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on March 4, 2004. The proposed routine use will become effective on April 13, 2004, unless we receive comments warranting it not to become effective.

ADDRESSES: Interested individuals may comment on this publication by writing to the Executive Director, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Pamela McLaughlin, Social Insurance Specialist, Strategic Issues Team, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3–C–2 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, e-mail address at *pam.mclaughlin@ssa.gov,* or by telephone at (410) 965–3677.

SUPPLEMENTARY INFORMATION:

I. Discussion of the Proposed New Routine Use

A. General

In an effort to improve the quality of research designed to enhance the decision-making process in the Social Security program, SSA is expanding the use of information it currently collects for additional SSA-approved research studies. Such further uses will permit the development of richer and more comprehensive information that can be used in actuarial, epidemiological, economic and other social science projects that will ultimately benefit the public, SSA, and other Federal, State or congressional support agencies' (*e.g.*, Congressional Budget Office (CBO) and the Congressional Research Staff in the Library of Congress) programs. The proposed use of the information will allow new studies to occur regarding the administration of the Social Security program, and other related programs, that might otherwise not be undertaken due to the lack of data.

B. Disclosure of Information to a Federal, State or Congressional Support Agency (e.g., CBO and the Congressional Research Staff in the Library of Congress) for Research, Evaluation or Statistical Studies

1. The types of information that are most commonly used that will be released under the proposed routine use may include, but not be limited to, the types of information in the following systems of records that SSA maintains:

(a) From the Completed Determination Record—Continuing Disability Determinations, 60–0050: date of birth; date disability began; type of claim; continuance or cessation code; date of termination; and date of completion.

(b) From the Master Files of Social Security Number (SSN) Holders and SSN Applications, 60–0058: date of birth; sex; race; place of birth; and date of death.

(c) From the Master Beneficiary Record, 60–0090: primary insurance amount; average indexed monthly earnings; date of death of primary beneficiary; beneficiary date of birth; beneficiary date of death; monthly benefit amount; monthly benefit payable; diagnosis code; reason for denial/disallowance; and dual-entitlement data.

(d) From the Supplemental Security Income Record and Special Veterans Benefits, 60–0103: transaction code; computation status; date of birth; date of death; sex; race; date of eligibility; payment status code; Federal assistance amount; and current amount of State supplementation.

(e) From the Old Age, Survivors and Disability Beneficiary and Worker Records and Extracts (Statistics), 60–0202: various data.

(f) From the Beneficiary, Family, and Household Surveys, Records and Extracts System (Statistics), 60–0211: various data.

2. The types of research activities contemplated by the proposed routine use do not include research proposals that involve the use of information from SSA's systems of records to draw samples for surveys or to contact individuals, other than in situations already provided for in regulations.

The proposed routine use reads as follows:

Disclosure may be made to a Federal, State, or congressional support agency (*e.g.*, Congressional Budget Office and the Congressional Research Staff in the Library of Congress) for research, evaluation, or statistical studies. Such disclosures include, but are not limited to, release of information in assessing the extent to which one can predict eligibility for Supplemental Security Income (SSI) payments or Social Security disability insurance (SSDI) benefits; examining the distribution of Social Security benefits by economic and demographic groups and how these differences might be affected by possible changes in policy; analyzing the interaction of economic and non-economic variables affecting entry and

exit events and duration in the Title II Old Age, Survivors, and Disability Insurance and the Title XVI SSI disability programs; and, analyzing retirement decisions focusing on the role of Social Security benefit amounts, automatic benefit recomputation, the delayed retirement credit, and the retirement test, if SSA:

a. Determines that the routine use does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose for which the proposed use is to be made:

(i) Cannot reasonably be accomplished unless the record is provided in a form that identifies individuals;

(ii) Is of sufficient importance to warrant the effect on, or risk to, the privacy of the individual which such limited additional exposure of the record might bring;

(iii) Has reasonable probability that the objective of the use would be accomplished;

(iv) Is of importance to the Social Security program or the Social Security beneficiaries or is for an epidemiological research project that relates to the Social Security program or beneficiaries;

c. Requires the recipient of information to:

(i) Establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record and agree to on-site inspection by SSA's personnel, its agents, or by independent agents of the recipient agency of those safeguards;

(ii) Remove or destroy the information that enables the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient receives written authorization from SSA that it is justified, based on research objectives, for retaining such information;

(iii) Make no further use of the records except

(a) Under emergency circumstances affecting the health or safety of any individual following written authorization from SSA;

(b) For disclosure to an identified person approved by SSA for the purpose of auditing the research project;

(iv) Keep the data as a system of statistical records. A statistical record is one which is maintained only for statistical and research purposes and which is not used to make any determination about an individual;

d. Secures a written statement by the recipient of the information attesting to the recipient's understanding of, and willingness to abide by, these provisions.

We are not republishing in their entirety the notices of systems of records to which we are adding the proposed new routine use disclosure. Instead, we are republishing only the identification number, and the name of each system of records, and the volume, page number, and date of the **Federal Register** (FR) issue in which the systems notice was last published. The proposed new routine use will be included in the following SSA systems notices:

(1) Completed Determination Record—Continuing Disability Determinations, 60–0050;

(2) Master Files of Social Security Number (SSN) Holders and SSN Applications, 60–0058;

(3) Master Beneficiary Record, 60–0090;

(4) Supplemental Security Income Record and Special Veterans Benefits, 60–0103;

(5) Old Age, Survivors and Disability Beneficiary and Worker Records and Extracts (Statistics), 60–0202; and

(6) Beneficiary, Family and Household Surveys, Records and Extracts System (Statistics), 60–0211.

II. Compatibility of Proposed Routine Use

The Privacy Act (5 U.S.C. 552a(a)(7) and (b)(3)) and SSA's disclosure regulation (20 CFR part 401) permit us to disclose information under a published routine use for a purpose that is compatible with the purpose for which we collected the information. Section 401.150(c) of SSA's Regulations at 20 CFR permits us to disclose information under a routine use, where necessary, to carry out SSA programs. This proposed routine use will allow new studies to occur regarding the administration of the Social Security program, and other related programs, that might not otherwise be undertaken due to the lack of data. The types of research activities contemplated by the proposed routine use would include, but are not limited to, assessing the extent to which one can predict eligibility for SSI payments or Social Security disability insurance benefits; examining the distribution of Social Security benefits by economic and demographic groups and how these differences might be affected by possible changes in policy; analyzing the interaction of economic and non-economic variables affecting entry and exit events and duration in the Title II Old Age, Survivors, and Disability Insurance and Title XVI SSI disability programs; and, analyzing retirement focusing on the role of Social Security benefit amounts, automatic benefit computation, the delayed retirement credit, and the retirement test. The proposed routine use is appropriate and meets the relevant statutory and regulatory criteria.

III. Effect of the Proposed Routine Use Disclosure on the Rights of Individuals

The proposed routine use will allow SSA to disclose more comprehensive information that can be used in actuarial, epidemiological, economic, and other social science projects that will ultimately benefit SSA, other Federal programs and the public. The research activity that will be conducted based on information disclosed under the proposed routine use will not result in decisions or actions taken against specific individuals. The routine use has established safeguards to prevent unauthorized use of disclosure of the record and to ensure the privacy and other rights of individuals. Additionally, we will adhere to all applicable provisions of the Privacy Act when disclosing information. Thus, we do not anticipate that the proposed new routine use will have any unwarranted adverse effect on the rights of individuals about whom data will be disclosed.

Dated: March 3, 2004.

Jo Anne B. Barnhart,

Commissioner.

[FR Doc. 04–5414 Filed 3–10–04; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4649]

Culturally Significant Objects Imported for Exhibition Determinations: ''Bonjour, Monsieur Courbet: The Bruyas Collection From the Musée Fabre, Montpellier''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 *note, et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition ''Bonjour,

Monsieur Courbet: The Bruyas Collection from the Musée Fabre, Montpellier,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Virginia Museum of Fine Arts, Richmond, Virginia, from on or about March 26, 2004 until on or about June 13, 2004, at the Sterling and Francine Clark Art Institute, Williamstown, Massachusetts, from on or about June 27, 2004 until on or about September 6, 2004, at the Dallas Museum of Art, Dallas, Texas, from on or about October 17, 2004 until on or about January 2, 2005, at the Fine Arts Museum of San Francisco, San Francisco, California from on or about January 22, 2005 until on or about April 3, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact the Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: March 1, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–5502 Filed 3–10–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4650]

Bureau of Democracy, Human Rights and Labor Request for Grant Proposals: Human Rights and Democratization Initiatives in Countries With Significant Muslim Populations

SUMMARY: The Office for the Promotion of Human Rights and Democracy of the Bureau of Democracy, Human Rights and Labor (DRL/PHD) announces an open competition for assistance awards. Organizations may submit grant proposals that focus on promotion of human rights, political participation, press freedom, rule of law, women's rights and civil society in countries with significant Muslim populations. The Bureau is particularly interested in proposals that focus on these issues in Pakistan, Central Asia, the Middle East and North Africa or Southeast Asia; however, DRL will consider proposals for projects in other countries/regions with significant Muslim populations.

Awards are contingent upon the availability of Fiscal Year 2004 funds. Up to $9,000,000 may be available under the Economic Support Fund for projects that address Bureau objectives in countries in the Muslim World. The Bureau anticipates awarding between 10–20 grants in amounts of $500,000–$1,000,000.

Pakistan

The Bureau of Democracy, Human Rights and Labor is interested in supporting projects in Pakistan which focus on the following activities:

1. Train and strengthen political parties;
2. Support Pakistan's judiciary, overall legal system and government institutions, including programs that promote efficiency, transparency and rule of law;
3. Promote press freedoms and train journalists in standards of fair and balanced reporting; build the capacity of media organizations to operate independently;
4. Strengthen institutions to promote the rule of law;
5. Build the capacity of civil society organizations, such as NGOs and professional associations;
6. Promote overall respect for human rights by both the government and civil society;
7. Encourage good governance, transparency and accountability.

Up to $4,000,000 of the overall $9,000,000 referred to in this solicitation may be available for projects in Pakistan. The Bureau anticipates awarding between 4–8 grants in amounts of $500,000–$1,000,000.

Central Asia

The Bureau of Democracy, Human Rights and Labor is interested in supporting projects in Central Asia (including Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan) which focus on the following activities:

1. Promote free and fair elections, with emphasis on support for democratically-oriented political parties as well as improvement of electoral processes and legislation;
2. Promote respect for human rights, especially advocacy training, monitoring and reporting on law enforcement abuses and combating law enforcement abuses;
3. Promote rule of law, with an emphasis on support for an independent judiciary, legal defense assistance and defense lawyers;
4. Strengthen press freedoms and build capacity of independent media;
5. Build the capacity of civil society organizations.

The Middle East, North Africa and Iran

The Bureau of Democracy, Human Rights and Labor is interested in supporting projects in the Middle East, North Africa and Iran, which focus on the following activities:

1. Support civil society, with emphasis on political actors and advocacy groups that involve women;
2. Increase access to information through freedom of the press, freedom of speech, and enhanced public awareness of human rights and democracy issues;
3. Promote democratic elections by strengthening institutional capacity, training political parties, NGOs and newly elected officials, and raising civic awareness;
4. Promote rule of law with an emphasis on civil liberties, government accountability, and administration of justice;

Southeast Asia

The Bureau of Democracy, Human Rights and Labor is interested in supporting projects in countries in Southeast Asia with significant Muslim populations which focus on the following activities:

1. Empower Muslim women, including projects that promote capacity building and/or networks of women or women's organizations, especially as they relate to human rights;
2. Address the problem of disenfranchised youth and the need to reach out to this group to prevent growth of extremism;
3. Promote political reform programs that would entail support for conducting free and fair elections, issues of good governance and corruption;
4. Promote independent media and access to a diversity of sources of information;
5. Promote the compatibility of democracy with Islam and increased political engagement with moderate Muslims;
6. Promote ethnic and religious tolerance initiatives to resolve conflict and disputes.

Background

DRL/PHD supports innovative, cutting-edge programs which uphold democratic principles, support and strengthen democratic institutions, promote human rights, and build civil

society in countries and regions of the world that are geo-strategically important to the U.S. DRL/PHD funds projects that have an immediate impact but that also have potential for continued funding beyond DRL/PHD resources. Projects must not duplicate or simply add to efforts by other entities.

Project Criteria

- Project implementation should begin no earlier than September 30, 2004.
- Projects should not exceed two years in duration. Shorter projects with more immediate outcomes may receive preference.
- Project activity should take place abroad. U.S.-based or exchange projects are strongly discouraged.
- Projects that have a strong academic or research focus will not be highly considered. DRL will not fund health, technology, environmental, or scientific projects unless they have an explicit democracy, human rights or rule of law component.
- Projects should include detailed plans for evaluation and assessment of impact; plans may utilize qualitative and/or quantitative methods and should address both project outputs and outcomes.
- Projects should include a follow-on plan that extends beyond the grant period ensuring that Bureau-supported programs are not isolated events.

In order to avoid the duplication of activities and programs, proposals should also indicate knowledge of similar projects being conducted in the regions and how the submitted proposal will complement them.

Applicant/Organization Criteria

Organizations applying for a grant should meet the following criteria:

- Be a U.S. non-profit organization meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).
- Have demonstrated experience administering successful projects in the country/region in which it is proposing to administer a project.
- Have existing, or the capacity to develop, active partnerships with in-country organization(s).
- Organizations that have not previously received and successfully administered U.S. government grant funds will be subject to additional scrutiny before an award can be granted.

Note: Organizations are welcome to submit more than one proposal, but should know that DRL wishes to reach out to as many different organizations as possible with its limited funds.

Budget Guidelines

Please refer to the Proposal Submission Instructions (PSI) for complete budget guidelines and formatting instructions.

Deadline for Proposals

All proposals must be received at the Bureau of Democracy, Human Rights and Labor by 5 p.m. eastern standard time (e.s.t.) on Wednesday, March 31, 2004. Please refer to the PSI for specific delivery instructions.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the PSI. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements.

Review Criteria

Eligible applications will be competitively reviewed according to the criteria stated below. Further explanation of these criteria is included in the PSI. These criteria are not rank-ordered and all carry equal weight in the proposal evaluation: Quality of the program idea; program planning and ability to achieve program objectives; multiplier effect/impact; program evaluation plan; institution's record/ability/capacity; cost-effectiveness.

FOR FURTHER INFORMATION CONTACT: The Office for the Promotion of Human Rights and Democracy of the Bureau of Democracy, Human Rights and Labor (DRL/PHD). Please specify Karen Gilbride 202–647–1458 on all inquiries and correspondence.

Please read the complete **Federal Register** announcement or *http://www.fedgrants.gov* announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package via Internet

The Solicitation Package consists of this RFP plus the Proposal Submission Instructions (PSI). The PSI contains detailed award criteria, specific budget instructions, and standard guidelines for proposal preparation. The PSI may be downloaded from the HRDF section on the Bureau's Web site at *http://www.state.gov/g/drl/.*

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements. Final technical authority for assistance awards resides with the Office of Acquisition Management's Grants Officer.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: March 5, 2004.

Lorne W. Craner,

Assistant Secretary for Democracy, Human Rights and Labor, Department of State.

[FR Doc. 04–5503 Filed 3–10–04; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF STATE

[Public Notice 4639]

Meeting of Advisory Committee on International Communications and Information Policy

SUMMARY: The State Department Advisory Committee on International Communications and Information Policy (ACICIP) will meet on March 18, 2004, from 10 a.m. to 12 noon in Room 1105 of the State Department's Harry S. Truman Building. The meeting is open to the public, subject to the conditions noted below. Those wishing to attend should contact John Finn at 202–647–5306 or by e-mail at *finnjw@state.gov.*

The purpose of the Advisory Committee on International Communications and Information Policy is to provide information and advice to the State Department for the development of policies relating to international telecommunications, information technology, and the Internet. The March 18 meeting will decide on establishing subcommittees or working groups to focus on specific geographic regions or technologies. Ambassador David A. Gross, U.S. Coordinator for Communications and Information Policy will take part.

Members of the public may attend these meetings up to the seating capacity of the room. While the meeting is open to the public, admittance to the Department of State building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, date of birth, and citizenship to John W. Finn at *finnjw@state.gov* no later than 5 p.m. on Tuesday, March 16, 2004. All attendees for this meeting must use the 23rd Street entrance. One of the following valid ID's will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. government agency ID. Non-U.S. government attendees must be escorted by Department of State personnel at all times when in the building.

For further information, please contact John W. Finn, Executive Secretary of the Committee, at 202–647–5306 or by e-mail at *finnjw@state.gov.*

Dated: March 8, 2004.

John W. Finn,

Executive Secretary, ACICIP, Department of State.

[FR Doc. 04–5650 Filed 3–10–04; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice No. 4638]

Secretary of State's Advisory Committee on Private International Law: Notice of Meeting

SUMMARY: There will be public meetings of a Study Group on Enforcement of Judgments of the Secretary of State's Advisory Committee on Private International Law, from 9 a.m. to 5 p.m. on Monday March 29 and from 2 p.m. to 5 p.m. on Tuesday March 30, at the new headquarters of the U.S. Patent & Trademark Office: Thomas Jefferson Building, 500 Dulany Street, Building Conference Center (Lobby Level), Alexandria, VA 22313–1450.

Full Text: The Department of State, in conjunction with the U.S. Patent and Trademark Office and other federal agencies, is convening meetings of the Secretary of State's Advisory Committee on Private International Law, Study Group on Enforcement of Judgments, in order to seek consultations on the proposed draft Hague Convention on Exclusive Choice of Court Agreements. The meetings will bring delegates from many member states of the Hague Conference on Private International Law together with experts from industry, trade associations, bar associations, non-governmental associations, and other interested parties to consider in more detail those aspects of the draft convention that bear on intellectual property rights and related litigation. The current draft of the proposed convention may be found on the Web site of the Hague Conference (*http://www.hcch.net*) or directly at *ftp://ftp.hcch.net/doc/workdoc49e.pdf.*

The meetings will be held from 9 a.m. to 5 p.m. on Monday March 29 and from 2 p.m. to 5 p.m. on Tuesday March 30, at the new headquarters of the U.S. Patent & Trademark Office: Thomas Jefferson Building, 500 Dulany Street, Building Conference Center (Lobby Level), Alexandria, VA 22313–1450. The meetings are open to the public up to the capacity of the meeting room. Interested persons are invited to attend and to express their views. Persons who wish to have their views considered are encouraged, but not required, to submit written comments in advance of the meeting. Written comments should be submitted by e-mail to Jeffrey Kovar at *kovarjd@state.gov.* All comments will be made available to the public by request to Mr. Kovar via e-mail or by phone (202–776–8420).

Persons wishing to attend must notify Ms. Cherise Reid by e-mail (*reidcd@state.gov*), fax (202–776–8482), or by telephone (202–776–8420).

Dated: March 3, 2004.

Jeffrey D. Kovar,

Assistant Legal Adviser for Private International Law, Department of State.

[FR Doc. 04–5501 Filed 3–10–04; 8:45 am]

BILLING CODE 4710–07–P

TENNESSEE VALLEY AUTHORITY

Renewal of the Regional Resource Stewardship Council

Pursuant to the Federal Advisory Committee Act (FACA) and 41 CFR 102–3.65, and following consultation with the Committee Management Secretariat, General Services Administration (GSA), notice is hereby given that the Regional Resource Stewardship Council (Council) has been renewed for a two-year period beginning February 3, 2004. The Council will provide advice to the Tennessee Valley Authority (TVA) on issues affecting TVA's natural resource stewardship activities.

Numerous public and private entities are traditionally involved in the stewardship of the natural resources of the Tennessee Valley region. It has been determined that the Council continues to be needed to provide an additional mechanism for public input regarding stewardship issues.

Further information regarding this advisory committee can be obtained from Sandra L. Hill, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902–1499, (865) 632–2333.

Dated: March 3, 2004.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment, Tennessee Valley Authority.

[FR Doc. 04–5451 Filed 3–10–04; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending February 27, 2004

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2004–17175.
Date Filed: February 23, 2004.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 353, PTC3 0718 dated 24 February 2004, TC3 Special Amending Resolution 010k between Japan and China (excluding Hong Kong SAR and Macao SAR) r1–r9. *Intended effective date:* 28 March 2004.

Docket Number: OST–2004–17209.
Date Filed: February 26, 2004.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR–AFR 0188 dated 27 February 2004, Expedited Resolution 002k–eba 5502Special Amending Resolution r1–r3. *Intended effective date:* 1 April 2004.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 04–5465 Filed 3–10–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Membership in the National Parks Overflights Advisory Group Aviation Rulemaking Committee

AGENCIES: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The National Park Service (NPS) and the Federal Aviation Administration (FAA), as required by the National Parks Air Tour Management Act of 2000, established the National Parks Overflights Advisory Group (NPOAG) in March 2001. The NPOAG was formed to provide continuing advice and counsel with respect to commercial air tour operations over and near national parks. On October 10, 2003, the Administrator signed Order No. 1110–138 establishing the NPOAG as an aviation rulemaking committee (ARC). This notice informs the public of a vacancy on the NPOAG ARC for a member representing air tour operator interests and invites interested persons to apply to fill the vacancy.

FOR FURTHER INFORMATION CONTACT: Barry Brayer, Executive Resource Staff, Western Pacific Region Headquarters, 15000 Aviation Blvd., Hawthorne, CA 90250, telephone: (310) 725–3800, Email: *Barry.Brayer@faa.gov*, or Karen Trevino, National Park Service, Natural Sounds Program, 1201 Oakridge Dr., Suite 350, Ft. Collins, CO, 80525, telephone (970) 225–3563, or *Karen_Trevino@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181. The Act required the establishment of the advisory group within 1 year after its enactment. The NPOAG was established in March 2001. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator and the Director (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

By Order No. 1110–138, October 10, 2003, the NPOAG became an aviation rulemaking committee (ARC).

The NPOAG ARC provides ''advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.''

Members of the NPOAG ARC may be allowed certain travel expenses as authorized by section 5703 of title 5, United States Code, for intermittent Government Service.

The current NPOAG ARC is made up of three members representing the air tour industry, four members representing environmental interests, and two members representing Native American interests. The current members of the NPOAG ARC are Heidi Williams (general aviation), Richard Larew and Alan Stephen (commercial air tour operations), Chip Dennerlein, Charles Maynard, Steve Bosak, and Susan Gunn (environmental interests), and Germaine White and Richard Deertrack (Indian tribes).

Public Participation in the NPOAG ARC

In order to maintain the balanced representation of the group, the FAA and the NPS invite persons interested in serving on the NPOAG ARC to represent air tour operator interests to contact either of the persons listed in **FOR FURTHER INFORMATION CONTACT.** Requests to serve on the NPOAG ARC should be made in writing and postmarked on or before April 12, 2004. The request should indicate whether or not you are an air tour operator, member of an association representing this interest group, or have another affiliation with air tour operations over national parks. The request should also state what expertise you would bring to air tour operator interests while serving on the NPOAG. The term of service for NPOAG members is 3 years.

Issued in Washington, DC on March 4, 2004.

John M. Allen,

Acting Director Flight Standards Service.

[FR Doc. 04–5559 Filed 3–10–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 193/ EUROCAE Working Group 44: Terrain and Airport Databases

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 193/EUROCAE Working Group 44 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 193/ EUROCAE Working Group 44: Terrain and Airport Databases.

DATES: The meeting will be held March 29–April 2, 2004 from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at Instituto Superior Tecnico (IST), Lisbon, Spain.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 193/EUROCAE Working Group 44 meeting. The agenda will include:

- *March 29:*
- Opening Plenary Session (Welcome and Introductory Remarks, Review/ Approval of Meeting Agenda, Review Summary of Previous Meeting)
- Subgroup 4 (Data Exchange Format)
- Resolution of Action Items
- Presentations
- Resolve Final Review and Comments (FRAC) on draft document, *Interchange Standards for Terrain, Obstacle, and Aerodrome Mapping Data*
- Resolution of comments
- *March 30:*
- Subgroup 4 (Continue previous day activities)
- Final Review and Comments (FRAC)
- Continued Resolution of comments
- *March 31:*
- Subgroup 4 (Continue previous day activities)
- Final Review and Comments (FRAC)
- *April 1:*
- Subgroup 4 (Continue previous day activities)
- Final Review and Comments (FRAC)
- *April 2:*
- Closing Plenary Session (Summary of Subgroup 4, Assign Tasks, Other Business, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION**

CONTACT section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 2, 2004.

Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

[FR Doc. 04–5557 Filed 3–10–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 186 meeting.

SUMMARY: The FAS is issuing this notice to advise the public of a meeting of RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B).

DATES: The meeting will be held April 5–9, 2004, starting at 9 a.m. (unless stated otherwise).

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 186 meeting. *Note: Specific working group sessions will be held on April 5, 6, 7, 8, & 9.* The plenary agenda will include:

- *April 8–9:*
- Opening Plenary Session (Chairman's Introductory Remarks, Review of Meeting Agenda, Review/Approval of Previous Meeting Summary)
- SC–186 Activity Reports
- WG–1, Operations and Implementation
- WG–2, Traffic Information Service—Broadcast (TIS–B)
- WG–3, 1090 MHz Minimum Operational Performance Standard (MOPS)
- WG–4, Application Technical Requirements
- WG–5, Universal Access Transceiver (UAT) MOPS
- WG–6, Automatic Dependent Surveillance—Broadcast (ADS–B) Minimum Aviation System Performance Standards (MASPS)
- Review Status—Requirements Focus Group
- EUROCAE WG–51 Activity Report
- Briefing—Australian ADS–B air-ground
- Review/Approval Revised DO–282, Minimum Operational Performance Standards for Universal Access Transceiver (UAT) Automatic Dependent Surveillance—Broadcast, RTCA Paper No. 031–04/SC186–217.
- Review/Approve Change 1 to DO–260A, Minimum Operational Performance Standards for 1090 MHz Automatic Dependent Surveillance—Broadcast (ADS–B) and Traffic Information Services (TIS–B), RTCA Paper No. 032–04/SC186–218.
- Closing Plenary Session (Date, Place and Time of Next Meeting, Other Business, Review Actions Items/Work Program, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 2, 2004.

Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

[FR Doc. 04–5558 Filed 3–10–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind a Notice of Intent To Prepare a Supplemental Draft Environmental Impact Statement (SDEIS): Pulaski Coiunty, AK

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescind notice of intent to prepare a SDEIS.

SUMMARY: The FHWA is issuing this notice to advise the public that the Notice of Intent published on February 18, 1999, to prepare a Supplemental Draft Environmental Impact Statement (SDEIS) for a proposed highway project in Pulaski County, Arkansas, is being rescinded.

FOR FURTHER INFORMATION CONTACT: Randal J. Looney, Environmental Specialist, Federal Highway Administration, Arkansas Division, 700 West Capitol Avenue, Room 3130, Little Rock, Arkansas, 72201–3298, Telephone: (501) 324–6430.

SUPPLEMENTARY INFORMATION:

Background

The FHWA, in cooperation with the Arkansas Highway and Transportation Department, is rescinding the notice of intent to prepare a Supplemental Draft Environmental Impact Statement (SDEIS) on a proposal to construct the North Belt Freeway, a four-lane, divided, fully controlled access facility located on new alignment in northern Pulaski County.

In 1994, a Final Environmental Impact Statement (FEIS) and a Record of Decision (ROD) identified a selected alignment (1A). However, a portion of this alignment was not compatible with the City of Sherwood's Master Street Plan, and the project was not included in the Transportation Improvement Program (TIP) developed by Metroplan, the responsible Metropolitan Planning Organization (MPO). On February 18, 1999, FHWA published a NOI to prepare a SDEIS as part of the development process for the construction of this proposed freeway project.

The proposed project will primarily serve central Arkansas including Little Rock, North Little Rock, Sherwood, Jacksonville, and northern Pulaski County, Arkansas. The SDEIS was to have addressed a new alignment alternative (1B) proposed by the City of Sherwood and three previously studied alternatives located between the Highway 107/Brockington Road interchange and the eastern boundary of Camp Robinson near Maryland Avenue and Batesville Pike. The three previously studied alternatives were evaluated in the project's Draft EIS in 1991 and in the project's Final EIS in 1994.

The SDEIS was to focus on a limited study area between Batesville Pike and Brockington Road in northern Pulaski County, since this is the portion of the proposed corridor where several alternative alignments were still being considered. The remaining portions of the selected and approved North Belt Freeway alignment to the east toward Highway 67 and to the west through Camp Robinson ending at the I–40/I–430 interchange were to be reviewed only to a level necessary to document if any substantial changes have taken place since the completion and approval of the project's FEIS and ROD.

A preliminary study of the project alignments completed in 2003 attempted to establish if the local community and MPO could support the originally selected project alternative. The public involvement process associated with this reevaluation indicated public opposition for the originally selected alignment alternative. The City of Sherwood and Metroplan, citing the project's incompatibility with local and regional plans, refused to endorse the originally selected alignment alternative as the locally preferred route. Therefore, an SDEIS will be conducted to evaluate all feasible alternatives, possibly including alignments not evaluated in the project's original DEIS and FEIS. The original NOI for the SDEIS is being rescinded because it limited the area of study. A notice of intent to announce an SDEIS with an expanded study area for this project will be published subsequent to this NOI.

To ensure that the full range of issues related to this proposed action and all significant issues are identified, comments and suggestions are invited from all interested parties regarding this action to rescind the NOI published on February 18, 1999, for the proposed North Belt Freeway. Comments or questions concerning this proposed action should be directed to the FHWA Arkansas Division at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: March 2, 2004.

Sandra L. Otto,

Division Administrator, FHWA, Little Rock, Arkansas.

[FR Doc. 04–5464 Filed 3–10–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Waivers of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR) section 211.41, and 49 U.S.C. 20103, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waiver of compliance with certain requirements of the Federal railroad safety regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being sought.

Mississippi Lime Company

FRA Waiver Petition No. FRA–2003–16130

Mississippi Lime Company located in Ste. Genevieve, Missouri, is seeking a ''Wavier from all applicable provisions of 49 CFR Sec. 200, *et. seq,* and any and all other applicable statutes, rules, and regulations enforced by the Federal Railroad Administration.'' The Mississippi Lime Company anticipates entering into a nonexclusive agreement to operate on approximately two miles of trackage owned by the Union Pacific Railroad Company (UP) from Milepost 87.0 to Milepost 89.0 on the Mosher Lead. The applicant states, ''The Mosher Lead is only used by the UP when (i) UP makes deliveries to the Company, (ii) UP's main line track that runs adjacent to the Mississippi River is inaccessible due to elevated water levels of the Mississippi River, and (iii) UP delivers one to three cars annually to MFA Co-Op Exchange, the only other industry located on the Mosher Lead.''

Since FRA has not yet completed its investigation of the Mississippi Lime Company petition, the agency takes no position at this time on the merits of stated justifications.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with the request for a waiver of certain regulatory provisions. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request.

All communications concerning these proceedings should identify the appropriate docket number (Docket Number FRA FRA–2003–16130) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza level) 400 Seventh Street, SW., Washington, DC 20590. All documents in the public docket, including Mississippi Lime Company's detailed waiver request, are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on March 5, 2004.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 04–5492 Filed 3–10–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Cooperative Agreements To Assist in the Development of Crash Outcome Data Evaluation System

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of availability—discretionary cooperative agreements to assist in the development and use of Crash Outcome Data Evaluation System.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a discretionary cooperative agreement program to assist states in the development and use of Crash Outcome Data Evaluation System (CODES) and solicits applications for projects under this program from states that have not previously been funded to develop CODES. Under this program, states will link their existing statewide traffic records with injury outcome and charge data. The linked data will be used to support highway safety decision-making at the local, regional, and State levels to reduce deaths, non-fatal injuries, and health care costs resulting from motor vehicle crashes.

DATES: Applications must be received at the office designated below on or before April 26, 2004, at 2 p.m.

ADDRESSES: Applications must be submitted to DOT/National Highway Traffic Safety Administration, Office of Contracts and Procurement (NPO–220), ATTN: Maxine D. Edwards, 400 7th Street, SW., Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA

Cooperative Agreement Program No. DTNH22–04–H–07020.

Applicants shall provide a complete mailing address where Federal Express mail can be delivered.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Maxine D. Edwards, Contract Specialist, at the Office of Contracts and Procurement.

All questions and requests for copies may be directed by e-mail at *Maxine.Edwards@nhtsa.dot.gov* or by telephone at (202) 366–4843.

Programmatic questions relating to this cooperative agreement program should be directed to Barbara Rhea CODES Contracting Officer's Technical Representative (COTR), at NHTSA, Room 6125, (NPO–123) 400 7th Street, SW., Washington, DC 20590, or by e-mail at *Barbara.Rhea@nhtsa.dot.gov* or by telephone at (202) 366–2714.

SUPPLEMENTARY INFORMATION:

Statement of Work

Background

Crash data alone are unable to convey the magnitude of the injury and financial consequences of the injuries resulting from motor vehicle crashes or the success of highway safety decision-making to prevent them. Outcome information describing what happens to all persons involved in motor vehicle crashes, regardless of injury, are needed.

Person-specific outcome information is collected at the crash scene and en route by EMS personnel, at the emergency department, in the hospital, and after discharge. When these data are computerized and merged statewide, they generate a source of population-based data that is available for use by state and local traffic safety and public health professionals. Linking these records to statewide crash data collected by police at the scene is the key to identifying the relationships among specific vehicle, crash, or occupant behavior characteristics and their injury and financial outcomes.

The feasibility of linking crash and injury outcome (EMS, emergency department, hospital discharge, death certificate, claims, etc.) data was demonstrated by the CODES project. This project evolved from the Intermodal Surface Transportation Efficiency Act of 1991, which mandated that NHTSA prepare a Report to Congress about the benefits of safety belt and motorcycle helmet use in terms of mortality, morbidity, injury severity and costs. NHTSA provided funding to the States of Hawaii, Maine, Missouri, New York, Pennsylvania, Utah, and Wisconsin to link their state data and use the linked data to analyze the effectiveness of safety belts and motorcycle helmets. The safety belt/helmet Report was delivered to Congress in February 1996. The success of the Report led NHTSA to award research funds in 1996 to three CODES states (New York, Pennsylvania, and Wisconsin) and three non-CODES states with linked crash and injury data (Alaska, Connecticut, and New Mexico) to develop state-specific applications. Additional funds became available to expand the number of CODES states. NHTSA awarded CODES linkage grants in 1997 to Connecticut, New Hampshire, Maryland, North Dakota, South Dakota, Oklahoma, and Nevada and, in 1998, to Iowa, Kentucky, Massachusetts, Nebraska, and South Carolina. Arizona, Delaware, Minnesota and Tennessee were funded in 1999. Georgia and Rhode Island were funded in 2000, and Indiana and Texas in 2002. Currently, 27 states have successfully implemented the data linkage techniques.

The CODES project also demonstrated that linked data have many uses for decision-making related to highway safety and injury control. In addition to demonstrating the effectiveness of safety belts and motorcycle helmets in preventing death, injury, and costs, the linked data were used to identify populations at risk for increased injury severity or high health care costs, the impact of different occupant behaviors on outcome, the safety needs at the community level, the allocation of resources for emergency medical services, the injury patterns by type of roadway and geographic location, and the benefits of collaboration on data quality. Crash outcome information enables decision-makers to target those prevention programs that have the most impact on preventing or reducing the injury and financial costs associated with motor vehicle crashes.

Data linkage fulfills expanded data needs without the additional expense and delay of new data collection. The linkage process itself provides feedback about data quality which, when improved, enhances the state data for their original purposes. Thus, it is in NHTSA's interest to encourage states to qualify for CODES funding. NHTSA benefits from the improved quality of the state data, while the states benefit from state-specific injury and financial outcome information about motor vehicle crashes.

Objective

The objective of this Cooperative Agreement program is to provide resources to the applicant to:

1. Coordinate the development and institutionalization of the capability to link state crash and injury outcome data to identify the injury and financial consequences of motor vehicle crashes.

2. Utilize this information in crash analysis, problem identification, and program evaluation to improve decision-making at the local, state, and national levels related to preventing or reducing deaths, injuries, and direct medical costs associated with motor vehicle crashes.

3. Provide NHTSA with population-based linked crash and injury data to analyze specific highway safety issues in collaboration with the CODES states.

4. Develop data linkage capabilities as a means of improving the quality of state data that support NHTSA's national data.

State data systems are stronger and more likely to survive when developed and supported by state funds. So, this cooperative agreement is not intended to fund basic development of state data systems, but rather to enhance their value via linkage. States with insufficient state data to perform the CODES linkages are encouraged to use state resources to improve their state data and qualify for CODES funding.

General Project Requirements

The grantees of this cooperative agreement will be required to:

1. Link statewide population-based crash to injury data for any two calendar years available since 2000 to produce a linked data file that, if not statewide, reflects a contiguous geographical area that contains at least three (3) million residents and all levels of emergency medical care so that persons involved in crashes do not need to be transferred elsewhere except in rare occurrences. The linked data must be representative and generalizable for highway traffic safety purposes in the state or within an area in the state. All applicants must be able to clearly document what data are available and what data are missing and the significance of the missing data for highway traffic safety planning efforts.

a. Develop a state/area-wide CODES that includes outcome information for all persons, injured and uninjured, involved in police reported motor vehicle crashes.

(1) The CODES should consist of person-specific crash data linked to hospital, death certificate, and either EMS or emergency department data, preferably both. States without EMS or emergency department data are eligible if this type of outpatient information can be obtained from insurance claims data.

(2) Additional state/area-wide data (driver licensing, vehicle registration, citation/conviction records, insurance claims, HMO/managed care, outpatient records, *etc.*) should be linked as necessary to meet state/area-wide objectives.

b. Set up processes for collaboration among the technical experts who manage the data files being linked.

c. Assign an agency to be responsible for:

(1) Obtaining a computer to be dedicated to CODES activities (the computer and linkage software resources may not be permanently tied to an existing computer network in such a way as to preclude their movement in the future, as directed by the CODES Board of Directors, to another organization interested in continuing the linkage and developing applications for the linked data that improve highway safety;

(2) Implementing CODES 2000 probabilistic linkage software and specified statistical techniques to perform the linkage of the crash and injury state data;

(3) Validating the linkage results via the use of imputation techniques;

(4) Analyzing the linked data; and,

(5) Cross-training sufficient staff to ensure continuation of the linkage capability when unexpected changes occur in organizational priorities or personnel during or after the project period.

d. Document the file preparation, linkage and validation processes so that the linkage can be repeated efficiently during subsequent years after Federal funding ends and provide evidence of this documentation.

e. Provide NHTSA a version of the linked data file, per NHTSA's guidelines, including documentation of the file structure and its conformance with State laws and regulations governing patient/provider confidentiality.

2. Use the linked data to influence highway traffic safety and injury control decision-making by implementing at least one application of linked data that is expected to have a significant impact on highway safety planning or a positive impact on reducing death, injury, and direct medical costs.

3. Use the linked data to prepare management reports using a format standardized by NHTSA for a national CODES report.

4. Develop the computer programs needed to translate the linked data into information useful for highway traffic safety and injury control at the local, regional, or state/area-wide level.

a. Develop, for access within the State, a public-use version of the linked data, copies of which will be distributed upon request.

b. Develop the resources necessary to produce and distribute fact sheets and routine reports, respond to data requests, and provide access to the linked data for analytical, management, planning, and other purposes after Federal funding ends.

c. Use the Internet and other electronic mechanisms to efficiently distribute and share information generated from the linked data.

5. Promote collaboration between the owners and users of the state/area-wide data to facilitate data linkage and state-specific applications for linked data.

a. Establish a state/area-wide CODES collaborative network.

(1) Convene a Board of Directors consisting of the data owners and major users of the state/area-wide data. The CODES Board of Directors will be responsible for managing and institutionalizing the linked data, establishing the data release policies for the linked data, supporting the activities of the grantee, ensuring that data linkage and application activities are appropriately coordinated within the state/area, and resolving common issues related to data accessibility, availability, completeness, quality, confidentiality, transfer, ownership, fee for service, management, *etc.* The CODES Board of Directors shall meet at least once a month either in person or via conference call.

(2) Convene a CODES Advisory Group consisting of the CODES Board of Directors and other stakeholders interested in the use of linked data to support highway safety, injury control, EMS, *etc.* The CODES Advisory Group will be informed of the results of the data linkage, application of the data for decision-making, the quality of the state/area-wide data for linkage and the quality of the linked data for analysis. The CODES Advisory Group shall meet in person twice a year.

b. Promote coordination of the various stakeholders through use of the Internet, teleconferencing, joint meetings, and other mechanisms to ensure frequent communication among all parties to minimize the expense of travel.

6. Work collaboratively with NHTSA to implement the Cooperative Agreement.

a. Attend Initial Briefing Meeting. Each grantee shall attend a briefing meeting (date and time to be scheduled within 30 days after the award) in Washington, DC, with NHTSA staff. The purpose of the meeting will be to review the goals and objectives of the project, discuss implementation of the linkage software, review the tasks to be specified in the action plan for the data linkage and applications of the linked data for highway safety or injury control decision-making and discuss the agendas for the Board of Directors and Advisory Group.

b. Submit Detailed Action Plan and Schedule. Within 30 days after the briefing meeting, the grantee shall deliver a detailed action plan and schedule, covering the remaining funding period, for accomplishing the data linkage and incorporating information generated from linked data into the processes for highway safety or injury control decision-making. The action plan shall be subject to the technical direction and approval of NHTSA.

c. Attend Technical Workshops. All grantees together shall attend two technology assistance workshops during project performance at locations convenient to the majority of CODES grantees. Each workshop will be organized to provide technical assistance, share data linkage experiences, develop standardized formats, review the proposed state-specific highway safety applications of linked data, and resolve common problems.

d. Progress Report. Grantee shall submit quarterly progress reports. During the period of performance, the grantee will provide letter-type reports to the COTR. These reports will compare what was proposed in the Action Plan with actual accomplishments during the past quarter; what commitments have been generated; what follow up and state-level support is expected; what problems have been experienced and what may be needed to overcome the problems; and what is specifically planned to be accomplished during the next quarter. These reports will be submitted seven days after the end of each quarter. Minutes of the meetings of the Board of Directors during the quarter, and any CODES applications such as reports, fact sheets or other publications must be attached to the Progress Report.

e. Develop a plan to institutionalize the data linkage and applications for linked data after Federal funding ends. By the end of the 15th month of funding, each grantee shall submit a long-range plan and schedule to institutionalize data linkage and the use of linked data for highway safety and injury control decision-making within the state.

f. Project Report. The grantee shall deliver to NHTSA, at the end of the

project, a final report describing the results of the data linkage process, and the applications of the linked data generated during the project. This report will follow guidelines provided by the COTR.

NHTSA Involvement

NHTSA will be involved in all activities undertaken as part of the Cooperative Agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of the Cooperative Agreement and coordinate activities between the grantee and NHTSA.

2. Provide, at no cost to the grantee, training and technical assistance by a CODES expert for up to two weeks on-site and off-site during the project to assist the grantee in preparing the files for linkage, implementing probabilistic linkage and other statistical techniques, validating the linkage results, developing applications for the linked data, and organizing the CODES Board of Directors and Advisory Group.

3. Develop a format in which the linked data and supporting documentation will be delivered to NHTSA.

4. Conduct Initial Briefing at NHTSA Headquarters in Washington, D.C. (Date and time to be scheduled within 30 days after the award.) The purpose of the meeting will be to review the goals and objectives of the project, discuss implementation of the linkage software, identify the tasks to be specified in the action plan for the data linkage and applications of the linked data for highway safety or injury control decision-making, and discuss agendas for the Board of Directors and Advisory Group.

5. Conduct two Technical Assistance workshops for the purposes of technical assistance, technology transfer. Each workshop will be organized to share data linkage experiences, develop standardized formats, review the proposed state-specific highway safety applications of linked data, and resolve common problems. Locations for the workshops will be determined based on the location of the Grantees. However, for the purpose of cost estimation, assume the workshops will be held in Washington, DC.

6. Collaboratively work with the state when using the state's linked data to analyze and report on specific highway safety issues.

7. When appropriate, NHTSA will publish state-specific reports on CODES applications.

Number of Cooperative Agreements, Award Amounts, and Period of Support

The project study effort described in this announcement will be supported through the award of up to three (3) Cooperative Agreements, depending upon the merit of the applications received and the availability of funding. A total of $750,000 will be available for this effort. Project efforts involving linkage of the state/area-wide data and applications for the linked data must be completed within twenty-one months after funding.

Eligibility Requirements

The grantee must be a state agency involved with highway traffic safety, such as a State Highway Safety Office, Department of Transportation or other State agency with demonstrated activities in the highway traffic safety areas, to ensure active involvement by highway traffic safety stakeholders. States that have previously been funded to develop CODES are not eligible. Only one application should be submitted for a state. Because this Cooperative Agreement program requires extensive collaboration among the data owners in order to achieve the program objectives, it is envisioned that the grantee agency may need to actively involve the data owners in the development of the formal application and may need to sub-contract activities with at least one of them to implement a successful CODES.

While the general eligibility requirements are broad, applicants are advised that this Cooperative Agreement program is not designed to support basic developmental efforts. Although no single organization within any state or area within the state has all of the required data capabilities, the application should demonstrate strong collaborative agreements with the data owners and access to at least the state/area-wide crash, hospital, death certificate, and either EMS or emergency department data, or both, by the time of the award. States/areas that collect at least the date of birth and ZIP Code of residence on their crash data and have state/area-wide health and/or vehicle insurance claims information may be eligible, in spite of the lack of EMS or emergency department information, if the claims data include everyone involved in motor vehicle crashes. In addition, it is important that the application indicate the level of commitment by the state, in terms of funding and/or shared resources, to meet program objectives, particularly institutionalization of the data linkage and applications for linked data.

Application Procedure

Each applicant must submit one original and four (4) copies of the application package to: DOT/National Highway Traffic Safety Administration, Office of Contracts and Procurement (NPO–220), ATTN: Maxine D. Edwards, 400 7th Street, SW., Room 5301, Washington, DC 20590. Applications must be typed on one side of the page only.

Applications must include a reference to NHTSA Cooperative Agreement Program Number DTNH22–04–H–07020. Only complete application packages received on or before 2 p.m. on April 26, 2004, will be considered.

Application Contents

1. The application package must be submitted with OMB Standard Form 424 (REV. 7–97, including 424A and 424B), Application for Federal Assistance, with the required information filled in and assurances signed (SF 424B). While the Form 424A deals with budget information and Section B identifies Budget Categories, the available space does not permit a level of detail that is sufficient to provide for a meaningful evaluation of the proposed total costs. A supplemental sheet shall be provided which presents a detailed breakdown of the proposed costs (direct labor, including labor category, level of effort, and rate; direct materials including itemized equipment; travel and transportation, including projected trips and number of people traveling; subcontractors/subgrants, with similar detail, if known; and overhead), as well as any costs the applicant proposes to contribute or obtain from other sources in support of the project. Applicants shall assume that awards will be made by July 2, 2004 and should prepare their applications accordingly.

2. The application shall include a program narrative statement of not more than 20 pages, which addresses the following as a minimum:

a. A brief description of the state/area in terms of its highway safety and injury control decision-making processes for planning, performance monitoring and other functions aimed at reducing death, injury, and costs of injuries resulting from motor vehicle crashes. This description should indicate how linked data would make a difference to the decision-making processes.

b. A brief description of the existing crash and injury outcome data files. Applicants will link state/area-wide population-based crash data to EMS (and/or emergency department or insurance claims), hospital discharge

and death certificate data to obtain injury and financial outcomes for persons injured in motor vehicle crashes for any two calendar years of data available since 2000. Linkages to census, other traffic records (vehicle registration, driver licensing, roadway, conviction/citation, *etc.*), insurance claims, *etc.*, are encouraged to meet priorities for highway safety and injury control decision-making. The following information should be reported for each year of the state/area-wide data proposed for linkage:

(1) The total crashes, total persons involved in crashes and the total persons injured by police-reported severity level (killed, incapacitating injury, non-incapacitating injury, possible injury, unknown if injured), state/area-wide.

(2) Information about the current status of the data files to be linked, recorded using the format below:

Data files	Reporting threshold (A)	Rate of compliance with (A)	Data years available to be linked (2000–2002)	Month and year most recent data year will be available	Percent of records computerized	Can remaining records be computerized? (Y/N)
Crash						
EMS						
ED						
Hospital						
Death Certificate						
Other						

(3) The data elements available to identify persons and crashes and the missing data rate for each.

c. A brief description of how staff from the various data owners will be cross-trained in the CODES linkage to compensate for potential future changes in organizational priorities and personnel.

d. A brief description of the process to be used to ensure adequate documentation of the data files and linkage process.

e. A brief description of how the linked data will be converted into information useful for the highway safety and injury control decision-making processes for the purpose of reducing death, injury, and costs resulting from motor vehicle crashes.

Describe:

(1) The different types of decision-making processes, currently being utilized in the state/area, that identify highway traffic safety and injury control objectives and prioritize prevention programs that have the most impact on reducing death, injury and direct medical costs associated with motor vehicle crashes; and

(2) Why linked data are needed to make these decision-making processes more effective and how the data will be incorporated.

f. A brief description of each data owner member of the CODES Board of Directors including the process that must be implemented to access the owner's data.

2. The application shall include an appendix. A large appendix is strongly discouraged. Materials not listed below should be included only if it is necessary to support information about data linkage, applications for linked data or institutionalization discussed in the application. Do not send copies of brochures, documents, etc., developed as the result of a collaborative effort in the state/area. The appendix should include the following:

a. Letters of support from each proposed member of the CODES Board of Directors. A letter of support should reflect the signer's level of commitment to the CODES project and thus should not be a form letter. The letter of support should document:

(1) Why linked data are important to the agency.

(2) The priority assigned by the agency to obtain linked data compared to other responsibilities.

(3) The agency's level of commitment in terms of the number of staff and the dollars or shared resources which will be available to support and institutionalize CODES.

(4) The agency's willingness to collaborate with other data owners to support shared ownership of the linked data.

(5) The agency's permission to collaborate with NHTSA during the project and to release the linked data (or description of policies which would restrict transfer) to NHTSA at the end of the project.

b. A brief description or letters of support should be included for the other stakeholders to be represented on the CODES Advisory Group. The letters of support should indicate the stakeholder's need for the linked data, and willingness to facilitate the linkage of state/area-wide data or use of linked data for decision-making.

c. A list of major activities in chronological order and a time line to show the expected schedule of accomplishments and their target dates.

d. Descriptions of the proposed project personnel as follows:

(1) Project Director: Include a resume along with a description of the director's leadership capabilities to make the various stakeholders work together.

(2) Key personnel proposed for the data linkage and applications of linked data, and other personnel considered critical to the successful accomplishment of this project: include a brief description of qualifications, employment status (permanent full-time or part-time, contractor full-time or part-time, other) in the organization, and respective organizational responsibilities. The proposed level of effort in performing the various activities should also be identified.

e. A brief description of the applicant's organizational experience in performing similar or related efforts, and the priority that will be assigned to this project compared to the organization's other responsibilities.

f. A brief description of any potential delays in implementing the project because of requirements for legislative approval before CODES funds can be expended.

g. Data Use Agreement. A description of the existing State laws and Privacy Act regulations governing patient/provider confidentiality in the data files being linked that would restrict use of the data for linkage at the state level

and/or for transfer of the CODES linked data to NHTSA for its use.

Application Review Process and Evaluation Factors

Initially, all application packages will be reviewed to confirm that the applicant is an eligible recipient and to ensure that the application contains all of the items specified in the Application Content section of this announcement. Each complete application from an eligible recipient will then be evaluated by an Evaluation committee. The applications will be evaluated using the following criteria:

1. Understanding the intent of the program (20%). The applicant's recognition of the importance of CODES to obtain injury and financial outcome data that are necessary for a comprehensive evaluation of the impact of highway safety and injury control countermeasures. The applicant's understanding of the importance of developing CODES as a meaningful and appropriate strategy for improving traffic records capabilities and ensuring the continuation of CODES after completion of this project.

2. Technical approach for project completion (40%). The reasonableness and feasibility of the applicant's approach for successfully achieving the objectives of the project within the required time frame. The appropriateness and feasibility of the applicant's proposed plans for data linkage and applications for the linked data. Evidence that the applicant has the necessary authorization and support from data owners to access injury and traffic records state/area-wide data, particularly total charges and information about type and severity of injury, which are not routinely available for highway safety analyses, and the authorization to collaborate with NHTSA.

3. Project personnel (20%). The adequacy of the proposed personnel to successfully perform the project study, including qualifications and experience (both general and project related), the various disciplines represented, and the relative level of effort proposed for the professional, technical and support staff.

4. Organizational capabilities (20%). The adequacy of organizational resources and experience to successfully manage and perform the project, particularly to support the collaborative network and respond to the increasing demand for access to the linked data. The proposed coordination with and use of other organizational support and resources, including other sources of financial support.

An organizational representative of the Governors Highway Safety Association will be assisting in NHTSA's technical evaluation process.

Special Award Selection Factors

After evaluating all applications received, in the event that insufficient funds are available to award to all meritorious applicants, NHTSA may consider the following special award factors in the award decision:

1. Priority may be given to those applicants that have statewide data available for linkage.

2. Priority may be given to applicants who have the highest probability of maintaining the collaborative network of data owners and users, of institutionalizing the linkage of the crash and injury outcome data on a routine basis, and of continuing to respond to data requests after the project is completed.

3. Priority may be given to an applicant on the basis that the application fits a profile of providing NHTSA with a broad range of population densities (rural through metropolitan) with different highway safety needs.

4. Priority may be given to an applicant who currently provides, or agrees to provide, state crash data annually to NHTSA's State Data System.

Terms and Conditions of the Award

1. Prior to award, each grantee must comply with the certification requirements of 49 CFR part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR part 29, Department of Transportation Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug Free Workplace (Grants). In addition, grantees must certify that data release agreements have been signed by the owners of the data files being linked to transfer the CODES linked database to NHTSA, according to NHTSA specifications.

2. Reporting Requirements and Deliverables:

a. Detailed Action Plan and Schedule. Within 30 days after the briefing meeting, the grantee shall deliver a detailed action plan and schedule for accomplishing the data linkage and applications of linked data for decision-making, showing any revisions to the approach proposed in the grantee's application. This detailed action plan will be subject to the approval of NHTSA and will describe the following:

(1) The personnel who will perform the tasks.

(2) The time period for obtaining the different files required for linkage.

(3) The milestones for completing the various phases of the probabilistic linkage and validation processes.

(4) The milestones for proposed meeting schedules and actions by the Board of Directors and Advisory Group.

(5) Date(s) for providing the linked data to NHTSA.

(6) The milestones for implementing the applications.

b. Quarterly Progress Report. During the performance, the grantee will provide letter-type reports to the NHTSA COTR. These reports will compare what was proposed in the Action Plan with actual accomplishments during the past quarter; what commitments have been generated; what follow-up and state-level support is expected; what problems have been experienced and what may be needed to overcome the problems; and what is specifically planned to be accomplished during the next quarter. Copies of the fact sheets, management reports and other CODES publications should be included with the Quarterly Progress Report. These reports will be submitted seven days after the end of each quarter. Because the security process for scanning mail at NHTSA causes the pages of published documents to stick together, electronic, rather than printed, versions of the state-specific publications should be sent so they can be distributed via NHTSA's CODES Web site.

c. Board of Directors and Advisory Group Meetings. Copies of the agenda and minutes for each Board of Directors and Advisory Group Meetings held during the quarter shall be attached to the Progress Report submitted to NHTSA.

d. Institutionalization Plan. The grantee shall deliver to NHTSA, by the end of the 15th month of funding, a long-range plan and schedule to institutionalize data linkage and the use of linked data for highway safety and injury control decision-making within the state.

e. Project Report. The grantee shall deliver to NHTSA, at the end of the project, a final report that describes the results of the data linkage process, and the applications of the linked data. The report shall follow the content outline mandated by NHTSA and include the following:

(1) A description of the state/area wide linked crash and injury data;

(2) A description of the file preparation;

(3) A description of the linkage, validation, imputation processes and results;

(4) A description of the extent of the documentation and how the documentation will facilitate linkage in subsequent years;

(5) A discussion of the limitations of the linked data and subsequent applications of these data;

(6) A description of the applications of linked data implemented for decision-making and results of the decision-making;

(7) A description of how the data linkage and use of linked data for decision-making has been institutionalized for decision-making;

(8) A description of the documentation created to facilitate repeating of the linkage process and an estimate of how much time is needed to repeat the linkage in subsequent years;

(9) A copy of the public-use formats that were successful for incorporating linked data into the decision-making processes for highway safety and injury control;

(10) A copy of the management reports prepared using the standardized format for the national CODES report; and,

(11) A copy of a state-specific application using the linked data that had a direct impact on highway safety planning or improved highway safety outcome in terms of reduced deaths, injuries, injury severity and costs.

f. CODES Linked Database. The grantee shall deliver to NHTSA after linkage, at the date specified in the Action Plan, the CODES linked databases. NHTSA will use the data to help facilitate the development of data linkage capabilities at the state/area-wide level and to encourage use of the linked data for decision-making.

The deliverables will include:

(1) The database in an electronic media and format acceptable to NHTSA, including all persons, regardless of injury severity (none, fatal, non-fatal), involved in a reported motor vehicle crash for any two calendar years of available data beginning in 2000, and including injury and financial outcome information for those who are linked.

(2) A copy of the file structure for the linked data file.

(3) Documentation of the definitions and file structure for each of the data elements contained in the linked data files.

(4) An analysis of the quality of the linked data and a description of any data bias that may exist, based on an analysis of the false positive and false negative linked records.

g. One state-specific application of the linked data that has an impact on the state's highway safety planning or program efforts designed to reduce death, injury, injury severity or costs resulting from motor vehicle crashes. Electronic versions of the state-specific publications should be sent so they can be distributed via NHTSA's CODES Web site.

3. During the effective performance period of Cooperative Agreements awarded as a result of this announcement, the agreement shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreements.

Joseph S. Carra,

Director for National Center for Statistics and Analysis, National Highway Traffic Safety Administration.

[FR Doc. 04–5440 Filed 3–10–04; 8:45 am]

BILLING CODE 4910–12–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34472]

Columbia Basin Railroad Company, Inc.—Lease and Operation Exemption—Clark County, WA

Columbia Basin Railroad Company, Inc. (CBRC), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire by lease and to operate approximately 14 miles of rail line owned by Clark County, WA (the County), between milepost 0.0 at Vancouver Junction, WA, and milepost 14.1 at Battle Ground, WA.[1]

CBRC certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or a Class I rail carrier. The transaction was scheduled to be consummated on or after February 20, 2004, the effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34472, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. Also, a copy of each pleading must be served on Rose-Michele Weinryb, 1300 19th Street, NW., 5th Floor, Washington, DC 20036.

CBRC is directed to serve a copy of this notice on all shippers on the line and on Lewis & Clark Railway Company within 10 days after publication in the **Federal Register** and to certify to the Board that it has done so.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: March 3, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–5258 Filed 3–10–04; 8:45 am]

BILLING CODE 4915–01–P

[1] Lewis & Clark Railway Company (Lewis & Clark), a Class III rail carrier, was authorized to conduct operations over the line pursuant to a lease agreement. *See Lewis & Clark Railway Company—Exemption Operation—Chelatchie Prairie Railroad, Inc.,* Finance Docket No. 31042 (ICC served May 22, 1987), and *Lewis & Clark Railway Company—Lease and Operation Exemption—in Clark County, WA,* STB Finance Docket No. 33325 (STB served Jan. 15, 1997). By letter dated January 30, 2004, the County notified Lewis & Clark that CBRC will be the new operator. By letter filed February 18, 2004, the County notified the Board that Lewis & Clark's lease agreement expired on January 31, 2004, that the County was in the process of changing operators, and that CBRC will be the new operator.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33407]

Dakota, Minnesota & Eastern Railroad Corporation Construction Into the Powder River Basin

In a decision served January 30, 2002, the Board gave approval to the Dakota, Minnesota & Eastern Railroad Corporation to construct and operate a 280-mile rail line into the Powder River Basin of Wyoming. The Board imposed extensive conditions to mitigate certain anticipated adverse environmental impacts, and also established an environmental oversight period. On appeal, the United States Court of Appeals for the Eighth Circuit vacated and partially remanded the Board's decision. *Mid States Coalition for Progress* v. *STB*, 345 F.3d 520 (8th Cir. Oct. 2, 2003). The court upheld the Board's decision with respect to all transportation issues, but remanded the case for further Board review on certain environmental issues. Petitions for rehearing of the court's decision were denied on January 30, 2004. Accordingly, the Board will address the remanded issues consistent with the decision of the court of appeals.

Dated: March 3, 2004.

Vernon A. Williams,

Secretary.

[FR Doc. 04–5493 Filed 3–10–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub-No. 406X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Reno County, KS

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon a line of railroad between BNSF milepost 0.62 and milepost 3.50, near South Hutchinson, in Reno County, KS, a distance of approximately 2.88 miles. The line traverses United States Postal Service Zip Codes 67501 and 67505.[1]

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (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 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 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 April 10, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 22, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 31, 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 BNSF's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by March 16, 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), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by March 11, 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 *www.stb.dot.gov.*

Decided: March 3, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–5259 Filed 3–10–04; 8:45 am]

BILLING CODE 4915–01–P

[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. The applicant initially indicated a proposed consummation date of April 9, 2004, but because the verified notice was filed on February 20, 2004, consummation may not take place prior to April 10, 2004. By facsimile filed on February 24, 2004, applicant's representative confirmed that the consummation date will be April 10, 2004.

[2] 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.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

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 Alcohol and Tobacco Tax and Trade Bureau, within the Department of the Treasury, is soliciting comments concerning ''Notice of Release of Tobacco Products, Cigarette Papers, or Cigarette Tubes.''

DATES: We must receive written comments on or before May 10, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Sandra L. Turner, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Room 200–E, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed Sandra L. Turner, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Room 200–E, Washington, DC 20220; telephone 202–927–2400.

SUPPLEMENTARY INFORMATION:

Title: Notice of Release of Tobacco Products, Cigarette Papers, or Cigarette Tubes.

OMB Number: 1513–0025.

Form Number: TTB F 5200.11.

Abstract: The form documents releases of tobacco products and cigarette papers and tubes from customs custody and returns of such articles to a manufacturer or export warehouse shipment for use in the United States. The form is also used to ensure compliance with laws and regulations at the time of transaction and for post audit examination.

Current Actions: There are no changes to this information collection and it is

being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 153.

Estimated Total Annual Burden Hours: 306.

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.

Dated: February 20, 2004.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 04–5435 Filed 3–10–04; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

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 Alcohol and Tobacco Tax and Trade Bureau, within the Department of the Treasury, is soliciting comments concerning ''Usual and Customary Business Records Maintained by Brewers.''

DATES: We must receive written comments on or before May 10, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Sandra L. Turner, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW, Room 200–E, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed Sandra L. Turner, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Room 200 E, Washington, DC 20220; telephone 202–927–2400.

SUPPLEMENTARY INFORMATION:

Title: Usual and Customary Business Records Maintained by Brewers.

OMB Number: 1513–0058.

Recordkeeping Requirement ID Number: TTB REC 5130/1.

Abstract: TTB audits brewers' records to verify production of beer and cereal beverage and to verify the quantity of beer removed subject to tax and removed without payment of tax.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1400.

Estimated Total Annual Burden Hours: One (1).

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.

Dated: February 20, 2004.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 04–5436 Filed 3–10–04; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

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 Alcohol and Tobacco Tax and Trade Bureau, within the Department of the Treasury, is soliciting comments concerning ''Marks on Equipment and Structures and Marks and Labels on Containers of Beer.''

DATES: We must receive written comments on or before May 10, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Sandra L. Turner, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Room 200 E, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Sandra L. Turner, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Room 200 E, Washington, DC 20220; telephone 202–927–2400.

SUPPLEMENTARY INFORMATION:

Title: Marks on Equipment and Structures and Marks and Labels on Containers of Beer.

OMB Number: 1513–0086.

Recordkeeping Requirement ID Number: TTB REC 5130/3 Marks on Equipment and Structures and TTB REC 5130/4 Marks and Labels on Containers of Beer.

Abstract: Marks, signs and calibrations are necessary on equipment and structures for identifying major equipment for accurate determination of tank contents, and segregation of tax paid and non-tax paid beer. Marks and labels on containers of beer are necessary to inform consumers of container contents, and to identify the brewer and place of production.

Current Actions: There are no changes to the information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,400.

Estimated Total Annual Burden Hours: One.

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.

Dated: February 20, 2004.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 04–5437 Filed 3–10–04; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

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 Alcohol and Tobacco Tax and Trade Bureau, within the Department of the Treasury, is soliciting comments concerning ''Recordkeeping for Tobacco Products Removed in Bond from Manufacturers Premises for Experimental Purposes—27 CFR 270.232(d).''

DATES: We must receive written comments on or before May 10, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Sandra L. Turner, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Room 200–E, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed Sandra L. Turner, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Room 200–E, Washington, DC 20220, telephone (202) 927–2400.

SUPPLEMENTARY INFORMATION:

Title: Recordkeeping for Tobacco Products Removed in Bond from Manufacturers Premises for Experimental Purposes—27 CFR 270.232(d).

OMB Number: 1513–0110.

Recordkeeping Requirement ID Number: N/A.

Abstract: The prescribed records apply to manufacturers who ship tobacco products in bond for experimental purposes. TTB can examine these records to determine that the proprietor has complied with law and regulations that allow such tobacco products to be shipped in bond for experimental purposes without payment of the excise tax.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 165.

Estimated Total Annual Burden Hours: One.

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.

Dated: February 20, 2004.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 04–5441 Filed 3–10–04; 8:45 am]

BILLING CODE 4810–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–103–90]

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 final regulation, PS–103–90 (TD 8578), Election Out of Subchapter K for Producers of Natural Gas (§ 1.761–2).

DATES: Written comments should be received on or before May 10, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn 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 regulations should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *(Larnice.Mack@irs.gov).*

SUPPLEMENTARY INFORMATION:

Title: Election Out of Subchapter K for Producers of Natural Gas.

OMB Number: 1545–1338.

Regulation Project Number: PS–103–90.

Abstract: This regulation contains certain requirements that must be met by co-producers of natural gas subject to a joint operating agreement in order to elect out of subchapter K of chapter 1 of the Internal Revenue Code. Under regulation § 1.761–2(d)(5)(i), gas producers subject to gas balancing agreements must file Form 3115 and certain additional information to obtain the Commissioner's consent to a change

in method of accounting to either of the two permissible accounting methods described in the regulations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 10.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 5.

The following paragraph applies to all of the collections of 1information 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: March 3, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–5565 Filed 3–10–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (That Represents the States of North Dakota, South Dakota, Minnesota, Iowa, Nebraska, Kansas, Missouri, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, April 5, 2004.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 (toll-free), or 718–488–2085 (non toll-free).

SUPPLEMENTARY INFORMATION: An open meeting of the Area 5 Taxpayer Advocacy Panel will be held Monday, April 5, 2004, from 3 p.m. to 4 p.m. c.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Audrey Y. Jenkins. Ms. Jenkins may be reached at 1–888–912–1227 or 718–488–2085, or write Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201.

The agenda will include the following: Various IRS issues.

Dated: March 5, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–5411 Filed 3–10–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Payroll Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Payroll Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to increasing compliance and lessoning the burden for Small Business/Self Employed individuals. Recommendations for IRS systemic changes will be developed.

DATES: The meeting will be held Thursday, April 8, 2004.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Payroll Committee of the Taxpayer Advocacy Panel will be held Thursday, April 8, 2004 from 3 p.m. EDT to 4:30 p.m. EDT via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174, or you can contact us at *http://www.improveirs.org*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: March 5, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–5563 Filed 3–10–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the State of California)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Tuesday, April 6, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Peterson O'Brien at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Tuesday, April 6, 2004 from 9 a.m. Pacific Time to 10 a.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary Peterson O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174, or you can contact us at *www.improveirs.org*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary Peterson O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: March 5, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–5564 Filed 3–10–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Savings and Loan Holding Company Report H–(b)11

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

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 comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection described below to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the Savings Association Holding Company Report H0–(b)11 proposal.

DATES: Submit written comments on or before April 12, 2004.

ADDRESSES: Send comments, referring to the collection by title (Savings Association Holding Company Report H–(b)11) or by OMB approval number (1550–0060), to OMB and OTS at these addresses: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, or e-mail to *Joseph_F._Lackey_Jr@omb.eop.gov*; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov*, (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Savings and Loan Holding Company Report H–(b)11.

OMB Number: 1550–0060.

Form Number: H–(b)11.

Regulation requirement: 12 CFR 584.1(a)(2).

Description: The H–(b)11 form is used by OTS to monitor savings and loan holding companies. As part of modernizing its supervision of savings and loan holding companies, OTS proposes to streamline and modernize its existing H–(b)11 form. The attached form reduces the amount of information items from 22 to four. Further, we are reducing the amount of ''hard copy'' submissions to only one, with another copy to be submitted in PDF format. OTS intends to substantially reduce the burden of the H–(b)11 by reducing duplication, and relying more on the expanded holding company information to be gathered in Schedule HC of the 2004 quarterly Thrift Financial Report (TFR), as well as examination scoping materials provided in the holding company Pre-Examination Response Kit (PERK). For holding companies that do not have a thrift subsidiary that files Schedule HC of the TFR, the holding company is to complete and file a quarterly Schedule HC. By transferring much of the needed information collection from the H–(b)11 to the PERK, OTS eliminates the duplication of effort in supplying the same information at two different times in the same year.

Type of Review: Renewal with revisions.

Affected Public: Savings association holding companies.

Estimated Number of Respondents: 1,007.

Estimated Frequency of Response: Quarterly (using the current form).

Estimated Burden Hours per Response: 2 hours.

Estimated Total Burden: 8,056 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Dated: March 1, 2004.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Deputy Director.

[FR Doc. 04–5423 Filed 3–10–04; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register

Vol. 69, No. 48

Thursday, March 11, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–16989; Airspace Docket No. 04–ACE–7]

Modification of Class E Airspace; Hays, KS

Correction

In rule document 04–5026 beginning on page 10330 in the issue of Friday, March 5, 2004, make the following correction:

§71.1 [Corrected]

On page 10331, in the first column, in §71.1, under the heading ''**ACE KS E2 Hays, KS**'', in the 10th line, ''160°'' should read ''162°''.

[FR Doc. C4–5026 Filed 3–10–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Office of Thrift Supervision

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

Correction

In notice document 04–4839 beginning on page 10294 in the issue of Thursday, March 4, 2004 make the following correction:

On page 10294, in the third column, under the **DATES** heading, in the second line, ''April 15, 2004'' should read ''April 5, 2004''.

[FR Doc. C4–4839 Filed 3–10–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
March 11, 2004

Part II

Department of Housing and Urban Development

Notice of Regulatory Waiver Requests Granted for the Third Quarter of Calendar Year 2003; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4854–N–03]

Notice of Regulatory Waiver Requests Granted for the Third Quarter of Calendar Year 2003

AGENCY: Office of the Secretary, HUD.

ACTION: Public Notice of the Granting of Regulatory Waivers from July 1, 2003, through September 30, 2003.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on July 1, 2003, and ending on September 30, 2003.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Aaron Santa Anna, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500, telephone (202) 708–3055 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the third quarter of calendar year 2003.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). This notice covers waivers of regulations granted by HUD from July 1, 2003, through September 30, 2003. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Housing, the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver-grant action.

Should HUD receive additional information about waivers granted during the period covered by this report before the next report is published, the next updated report will include these earlier waivers that were granted, as well as those that occurred during October 1, 2003, through December 31, 2003.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: March 3, 2004.

Alphonso Jackson,

Acting Secretary.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development July 1, 2003, Through September 30, 2003

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.

II. Regulatory waivers granted by the Office of Housing.

III. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 91.520(a).

Project/Activity: Request for waiver of the submission deadline for the Consolidated Annual Performance and Evaluation Report (CAPER) of the county of Essex, New Jersey.

Nature of Requirement: The regulation at 24 CFR 91.520(a) requires each grantee to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Reasons Waived: Essex County's program year ended on May 31, 2003, and therefore its CAPER was due August 29, 2003. Essex County requested a 45-day extension of its submission deadline to October 13, 2003, because, according to the county, a series of personnel reassignments and reclassification actions had severely hampered its ability to prepare and submit the CAPER in a timely manner. The county noted that the extension would enable the county's Division of Housing and Community Development to present an accurate and comprehensive report. If the deadline for submission of the CAPER had been denied, the county would not have been able to submit a complete and accurate expenditure report on its 2002 program. The CAPER report provides local residents with information on the city's accomplishments during the year, and the report data goes into HUD's national database, which is used for various reporting purposes, including the annual report to Congress. While HUD desires timely reports, it is also interested in ensuring that the performance reports prepared by grantees are complete and accurate.

Date Granted: August 19, 2003.

Contact: Nanci R. Doherty, Special Assistant to the Deputy Assistant Secretary, Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–2565.

• *Regulation:* 24 CFR 91.520(a).

Project/Activity: Request for waiver of the submission deadline for the CAPER of the city of Baltimore, Maryland.

Nature of Requirement: The regulation at 24 CFR 91.520(a) requires each grantee to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Reasons Waived: The city of Baltimore's program year ended on June 30, 2003, and therefore its CAPER was due September 29, 2003. The city requested an extension of its submission deadline to November 21, 2003. The extension was necessary because of two circumstances: (1) additional time needed to account for the completion of 82 CDBG activities dating from the late 1980's through the early 1990s in order to incorporate them into the city's IDIS, and (2) an augmentation of the city's CAPER format in order to increase its accessibility and usefulness to a wider audience. If the deadline for submission of the CAPER had been denied, the city would have been unable to submit a complete and accurate expenditure report for its 2002 program. Furthermore, the CAPER provides local residents with information on accomplishments during the city's program year and HUD with information for its national database, which is used for various reporting purposes, including the annual report to Congress. While HUD desires timely reports, it is also interested in ensuring that grantee performance reports are complete and accurate.

Date Granted: September 22, 2003.

Contact: Nanci R. Doherty, Special Assistant to the Deputy Assistant Secretary, Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–2565.

• *Regulation:* 24 CFR 91.520(a).

Project/Activity: Request for waiver of the submission deadline for the CAPER of the city of Sioux City, Iowa.

Nature of Requirement: The regulation at 24 CFR 91.520(a) requires each grantee to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Reasons Waived: Sioux City's program year ended on June 30, 2003, and therefore its CAPER was due September 29, 2003. The city requested an extension of its submission deadline to November 30, 2003, because of the unexpected retirement of its Community Development Division Manager and the recent temporary loss of its Community Development Project Coordinator due to illness. These employees were responsible for the management of Integrated Disbursement and Information System (IDIS) data and submission of the CAPER, and therefore their absence adversely affected the ability of the city to prepare an accurate and complete CAPER. The city was in the process of hiring a new Community Development Division Manager and expected the return of its Community Development Project Coordinator in the near future. If the deadline for submission of the CAPER report had been denied, the city would not have been able to submit a complete and accurate expenditure report on its 2002 program. The performance report provides local residents with information on the city's accomplishments during the year, and the city enters reporting data into IDIS, HUD's national database, which is used for various reporting purposes, including the annual report to Congress. While HUD is greatly desirous of timely reports, it is also interested in ensuring that the performance reports prepared by grantees are complete and accurate.

Date Granted: September 23, 2003.

Contact: Nanci R. Doherty, Special Assistant to the Deputy Assistant Secretary, Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–2565.

• *Regulation:* 24 CFR 91.520(a).

Project/Activity: Request for waiver of the submission deadline for the CAPER of the county of Maui, Hawaii.

Nature of Requirement: The regulation at 24 CFR 91.520(a) requires each grantee to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Reasons Waived: The county of Maui's program year ended on June 30, 2003, and therefore its CAPER was due September 28, 2003. The county requested an extension of its submission deadline until December 30, 2003. The extension was needed due to the turnover of two of the three CDBG-funded staff positions. Both of the CDBG positions have been filled, but due to the backlog of work additional time was required to prepare the CAPER. If the deadline for submission of the CAPER had been denied, the county would not have been able to submit a complete and accurate expenditure report on its 2002 program. The performance report provides county residents with information on Maui's accomplishments during the year, and the report data goes into HUD's national database, which is used for various reporting purposes, including the annual report to Congress. While HUD desires timely reports, it is also interested in ensuring that the performance reports prepared by grantees are complete and accurate.

Date Granted: September 25, 2003.

Contact: Nanci R. Doherty, Special Assistant to the Deputy Assistant Secretary, Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–2565.

• *Regulation:* 24 CFR 91.520(a).

Project/Activity. Request for waiver of the submission deadline for the CAPER of the city of Hampton, Virginia.

Nature of Requirement: The regulation at 24 CFR 91.520(a) requires each grantee to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Reasons Waived: The city of Hampton's program year ended on June 30, 2003, and therefore its CAPER was due September 29, 2003, for the city's 2002 program year. The city requested an extension of its submission deadline due to the impact of hurricane Isabel, which interrupted the city's normal scheduling of events. The regulation at 24 CFR 91.105(d) requires a grantee to provide citizens not less than 15 days to comment on the CAPER before it is submitted to HUD, and 24 CFR 91.105(e) requires a public hearing to review program performance. Although the city's CAPER had been completed, the city found it necessary to postpone the public hearing on the CAPER due to other urgencies following the storm. Therefore, additional time was required to conduct the public hearing and allow the required 15-day comment period. If an extension of the CAPER deadline had been denied, the city would have been unable to hold a public hearing with local residents to discuss the city's performance and accomplishments, and it would not have been able to allow local residents the opportunity to comment on the CAPER prior to its submission to HUD. While HUD desires timely reports, it is also interested in ensuring that grantee performance reports are accurate and complete and that local residents have the opportunity to review and comment on the grantee's performance.

Date Granted: September 25, 2003.

Contact: Nanci R. Doherty, Special Assistant to the Deputy Assistant Secretary, Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–2565.

• *Regulation:* 24 CFR 91.520(a).

Project/Activity: Request for waiver of the submission deadline for the CAPER of the cities of Virginia Beach, Norfolk, Petersburg, and Portsmouth and the county of Chesterfield, Virginia. These jurisdictions requested waiver of the submission deadline for their CAPERs. All of the jurisdictions requesting the waiver were located in the storm path of hurricane Isabel.

Nature of Requirement: The regulation at 24 CFR 91.520(a) requires each grantee to submit a performance report to HUD within 90 days after the close of its program year.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Reasons Waived: The program year for each of these jurisdictions ended on June 30, 2003, and therefore each grantee's CAPER was due by September 29, 2003. The reason for the requests for an extension of the submission date was the impact of hurricane

Isabel, the effects of which interrupted the normal business schedules of the affected communities. As a result, although the jurisdictions acknowledged that each of their CAPERs were completed or near completion, storm-related problems such as power outages, flooding, and other emergencies prevented each community from completing the final document for a timely submission to HUD. If an extension of the CAPER deadline had been denied, these affected communities would have been unable to submit their reports on time due to conditions created by hurricane Isabel. While HUD desires timely reports, it is also interested in ensuring that grantee performance reports are accurate and complete.

Date Granted: September 26, 2003.

Contact: Nanci R. Doherty, Special Assistant to the Deputy Assistant Secretary, Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–2565.

• *Regulation:* 24 CFR 91.520(a).

Project/Activity. Request for waiver of the submission deadline for the CAPER of the city of Hopewell, Virginia.

Nature of Requirement: The regulation at 24 CFR 91.520(a) requires each grantee to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Reasons Waived: The city of Hopewell's program year ended on June 30, 2003, and therefore its CAPER was due September 29, 2003. The city requested an extension of its submission deadline to November 14, 2003. The extension was necessary due to the departure of an experienced staff member, whose position has now been filled. Moving forward, the city estimated it would need an additional 45 days to complete its CAPER. If the deadline for submission of the CAPER had been denied, the city would have been unable to submit a complete and accurate expenditure report for its 2002 program. Furthermore, the CAPER provides local residents with information on accomplishments during the city's program year and HUD with information for its national database, which is used for various reporting purposes, including the annual report to Congress.

Date Granted: September 25, 2003.

Contact: Nanci R. Doherty, Special Assistant to the Deputy Assistant Secretary, Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–2565.

• *Regulation:* 24 CFR 576.35(a)(ii).

Project/Activity: Request for waiver of the 24-month deadline of the expenditure of Emergency Shelter Grant (ESG) Funds, Project Number: S01DC010001, Tallapoosa County Commissioner, State of Alabama.

Nature of Requirement: The State of Alabama requested an extension of the 24-month ESG expenditure deadline. The regulations at 24 CFR 576.35(a)(ii) provide that State recipients must expend ESG funds within 24-months of the grant award by HUD.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Reasons Waived: The State of Alabama requested a six-month extension of the June 4, 2003, deadline for expenditure of ESG funds because of the extensive delay in obtaining licensing approval from the State's Department of Human Resources following required renovations under the Americans with Disabilities Act that prevented the grantee from complying with the 24-month expenditure deadline. Waiving the 24-month requirement and extending the deadline for six months allowed the grantee to complete the activities and expend the remaining funds for youth services. The State and the county provided sufficient justification to permit approval of this waiver request.

Date Granted: September 30, 2003.

Contact: Nanci R. Doherty, Special Assistant to the Deputy Assistant Secretary, Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–2565.

II. Regulatory Waivers Granted by the Office of Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit on above-market rents (24 CFR 401.600):

FHA No.	Project name	State
07135458	Armitage Commons	IL
12594009	Baltimore Garden Apartments.	NV
12594011	Cleveland Garden Apartments.	NV
04235336	Eastland Woods	OH
07135733	Evergreen Terrace I	IL
03435174	Finch Towers	PA
01635066	Hanora Lippitt Mills Apartments.	RI
03444115	Hugh Carcella Apartments.	PA
04235347	Lakeshore Village	OH
01335117	Lillian Y. Cooper Apartments.	NY
01235312	Marion Avenue Rehabilitation.	NY
12735339	Montesano Annex Apartments.	WA
12735339	Montesano Annex Apartments.	WA
04235373	Newton Woods	OH
01257184	Norgate Plaza	NY
03535090	Oakland Park Apartments (also known as Roger Gardens).	NJ
05334278	Sheraton Towers	NC
08635177	Southwood Townhouses.	TN
01257161	Unity Apartments	NY
08435334	Wesley Senior Towers	MO
03435186	Williamsport Neighborhood Strategy Area (NSA).	PA
12392501	Winslow West (also known as Kachina Gardens).	AZ

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months after their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring and that the properties will not default on their Federal Housing Administration (FHA) insured mortgages during the restructuring process.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 26, 2003.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner or their restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Norman Dailey, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, SW., Washington, DC 20410–8000, telephone (202) 708–3856.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit on above-market rents (24 CFR 401.600):

FHA No.	Project name	State
01444047	Braco-I	NY
01335105	Brandegee Gardens	NY
09335086	Cedar View Apartments.	MT
04535094	Clarksburg Towers	WV
03435185	Cobbs Creek Neighborhood Strategy Area (NSA).	PA
06235333	Crossgates Apartments	AL
01257153	East 21st Street Apartments.	NY
08235225	Eastview Terrace Apartments.	AR
06135371	Edgewood Housing II	GA
12135677	Eureka Central Residence.	CA
11535420	Falfurrias Village Apartments.	TX
04235327	Fostoria Townhouses	OH
07335407	Gary Neighborhood Strategy Area (NSA) I & II.	IN
01257088	Greene Park Arms	NY
17138007	Kenwood Square	WA
08335267	Lakeland Wesley Village I.	KY
01257121	Maria Estela I	NY
06535334	Moorhead Manor Apartments.	MS
01335109	Ninth Street Neighborhood Strategy Area (NSA) II.	NY
01257142	Noonan Plaza	NY

FHA No.	Project name	State
06135232	Oconee Park Apartments.	GA
06535591	Pendleton Square	MS
03235022	Prestwyck Apartments	DE
11392501	Prince Hall Gardens II	TX
02335172	Schoolhouse 77	MA
01255173	Siloam House	NY
10135263	Sleeping Ute Apartments.	CO
08435196	Sullivan Hall	MO
08445006	Sunflower Park Apartments.	KS
01257159	Sutter Houses	NY
07335448	The Crossings II Apartments.	IN
07335420	The Meadows Apartments.	IN
01257180	Union Gardens I	NY
05635185	Vistas De Jagueyes	PR
05235300	Washington Gardens ...	MD
04235313	William E. Fowler, Sr. Apartments II.	OH
04535100	Williamson Towers	WV
08435203	Woodlen Place Apartments.	MO

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months after their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 26, 2003.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner or their restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Norman Dailey, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, SW., Washington, DC 20410–8000, telephone (202) 708–3856.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit on above-market rents (24 CFR 401.600):

FHA No.	Project name	State
06235162	Hermitage Oaks Apartments.	AL
06235256	Hermitage Place Apartments.	AL
06235355	Oak Trace Apartments	AL
01735210	Village Apartments	CT
06635038	Jones Walker Palm Garden Apartments.	FL
03135269	St. Mary's Villa	NJ
01235472	Barkley Gardens	NY
01335095	Faxton Scott House (also known as Margaret Knamm Apartments).	NY
04235396	Findlay Green Apartments.	OH
04335145	Pomeroy Cliff Apartments.	OH
04235328	Smiley Garden Apartments.	OH

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months after their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 25, 2003.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner or their restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Norman Dailey, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, SW., Washington, DC 20410–8000, telephone (202) 708–3856.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit on above-market rents (24 CFR 401.600):

FHA No.	Project name	State
03435185	Cobbs Creek	PA
10235164	Tumbleweed Apartments.	KS
08335267	Lakeland Wesley Village I.	KY
02335253	Villa Nueva Vista	MA
05235338	Sharp Leadenhall II	MD
08435196	Sullivan Hall	MO
01257141	Bruckner Houses	NY
01257060	Concourse Plaza	NY
01257075	Davidson Avenue Rehab II.	NY
01257148	The Gateways (also known as Greenport Apartments).	NY
01257383	Dean North Apartments	NY
04235343	Bay Meadows Apartments.	OH
04235327	Fostoria Townhouses ..	OH
04235345	Little Bark View	OH
04335238	McArthur Park	OH
03435174	Finch Towers	PA

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months after their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 25, 2003.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner or their restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Norman Dailey, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, SW., Washington, DC 20410–8000, telephone (202) 708–3856.

• *Regulation:* 24 CFR 883.606.

Project/Activity: Ashland/Dellwood Apartments, Cambridge, MN; Project Number: MN46–H162–391–MHFA #80–092.

Nature of Requirement: Section 883.606(b) establishes the procedures by which a State agency is entitled to a reasonable fee, determined by HUD, for administering a contract on newly constructed or substantially rehabilitated units, provided there is no override on the permanent loan granted by the agency to the owner for a project containing assisted units.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 1, 2003.

Reason Waived: The Minnesota Housing Finance Agency (MHFA) negotiated and secured from the owner of Dellwood a commitment to remain in the Section 8 program for 10 years beyond its current commitment in return for an adjustment in allowable distribution consistent with that available to smaller projects in the MHFA portfolio. The terms of the Dellwood's commitment are the same as those imposed on the other MHFA bond financed Section 8 assisted projects that were provided a waiver permitting MHFA to continue to collect override and contract administration fees.

Contact: Beverly J. Miller, Director, Office of Multifamily Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: St. Tropez Drive Group Home, Newport News, VA; Project Number: 051–HD092/VA36–Q001–007.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 1, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Southampton Arch Group Home, Portsmouth, VA; Project Number: 051–HD090/VA36–Q001–005.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: July 1, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: The Carriage House at Acushnet Heights, New Bedford, MA; Project Number: 023–EE147/MA06–S011–019.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: July 2, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Woodland Estates, North Providence, RI; Project Number: 016–HD025/RI43–Q991–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: July 2, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Wellman House, Bath County, VA; Project Number: 051–HD103/VA36–Q011–006.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: July 7, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Crestview Unity, Bryan, TX; Project Number: 114–EE088/TX24–S011–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: July 7, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Grady Manor, Charlottesville, VA; Project Number: 051–HD095/VA36–Q001–010.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: July 9, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Mountain Vistas, Redding, CA; Project Number: 136–EE064/CA30–S011–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: July 9, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Piedmont Drive Group Home, Spotsylvania, VA; Project Number: 051–HD086/VA36–Q001–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: July 9, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Creedmoor Court, Brookline, PA; Project Number: 033–EE109/PA28–S011–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: July 9, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Maison de Lemaire, Lafayette, LA; Project Number: 064–HD061/LA48–Q011–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: July 15, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant

Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Falcon Senior Housing, Wilbraham, MA; Project Number: 023–EE122/MA06–S001–007.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 15, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Miller Avenue Apartments, Duquesne, PA; Project Number: 033–EE108/PA28–S011–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 15, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Astoria Village, Sylmar, CA; Project Number: 122–HD145/CA16–Q011–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 15, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: St. Agnes Manor, Jeanerette, LA; Project Number: 064–EE125/LA48–S011–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 15, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area. Labor and material costs increased after the area was hit by two hurricanes.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Lutheran Homes #2, Oak Harbor, OH, Project Number: 042–EE130/OH12–S011–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 16, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Crossroad II, Providence, RI; Project Number: 016–HD031/RI43–Q001–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 16, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding from other sources. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Tartan Village, Kilmarnock, VA; Project Number: 051–EE082/VA36–S011–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 16, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Colman Court, Cleveland, OH; Project Number: 042–EE135/OH12–S011–009.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 17, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Culpeper Elderly, Culpeper, VA; Project Number: 051–EE074/VA36–S001–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 17, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Paumanack Village V, Melville, NY; Project Number: 012–EE308/NY36–S011–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 21, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Volunteers Of America (VOA) Elderly, Louisville, KY; Project Number: 083–EE082/KY36–S011–008.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 28, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Melvin T. Walls Manor, Ypsilanti, MI; Project Number: 044–EE070/MI28–S000–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 6, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Ada S. McKinley 4, Chicago, IL; Project Number: 071–HD110/IL06–Q981–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 12, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Lutheran Social Services of New England, Middletown, CT, Project Number: 017–EE053/CT26–S991–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 12, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and unique among 202 projects because this 202 project is part of a condominium development.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Victory Gardens, New Haven, CT; Project Number: 017–EE066/CT26–S011–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 12, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Abilities of San Juan, Melbourne, FL; Project Number: 067–HD088/FL29–Q021–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 19, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Weinberg Apartments at Owings Mills, Phase I, Owings Mills, MD; Project Number: 052–EE048/MD06–S021–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 20, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Mountain View Home, McConnellsburg, PA; Project Number: 033–EE106/PA28–S001–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 4, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Pine Street Inn, Dorchester, MA; Project Number: 023–EE098/MA06–S981–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 5, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: The Salvation Army Evangeline Booth Garden Apartments, Pasadena, TX; Project Number: 114–EE095/TX24–S011–008.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 5, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Wofford Park, Hattiesburg, MS; Project Number: 065–HD029/MS26–Q021–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 9, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Timber Lawn Place, Jackson, MS; Project Number: 065–EE034/MS26–S011–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 9, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Piedmont Drive Group Home, Spotsylvania, VA; Project Number: 051–HD086/VA36–Q001–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 10, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Creekside Gardens, Paso Robles, CA; Project Number: 122–EE162/CA16–S991–013.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 10, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Congress Street Apartments, New Port Richey, FL; Project Number: 067–HD077/FL29–Q001–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 10, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Casimir House, Gardena, CA; Project Number: 122–HD142/CA16–Q011–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 10, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Gates Gardens Senior Housing, Brooklyn, NY; Project Number: 012–EE312/NY36–S011–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 10, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Scuffling Hill Road Group Home, Rocky Mount, VA; Project Number: 051–HD099/VA36–Q011–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 11, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Belmeno Manor, Long Beach, CA; Project Number: 122–HD146/CA16–Q011–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 12, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: National Church Residence (NCR) of North Fairmount, Cincinnati, OH; Project Number: 046–EE056/OH10–2001–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 12, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: St. Brendan Senior Housing, Chicago, IL; Project Number: 071–EE159/IL06–S001–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 12, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Calvary Senior Center, Springfield, IL; Project Number: 072–EE141/IL06–S011–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 12, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Greenfield Manor, Los Angeles, CA; Project Number: 122–HD144/CA16–Q011–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 12, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Reseda Horizon, Northridge, CA; Project Number: 122–HD136/CA16–Q001–007.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 13, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Bishop Goedert Residence, Hines, IL; Project Number: 071–EE178/IL06–S021–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 16, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Newell Retirement Apartments, San Antonio, TX; Project Number: 115–EE062/TX59–S011–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 16, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Vermont Seniors, Los Angeles, CA; Project Number: 122–EE148/CA16–S981–017S.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 16, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Berry Wood (also known as Deerfield Plaza), Deerfield Township, OH; Project Number: 046–EE058/OH10–S011–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 16, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Villa at Marian Park, Akron, OH; Project Number: 042–EE112/OH12–S991–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 17, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Judson Village, Cincinnati, OH; Project Number: 046–HD024/OH10–Q011–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: September 22, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Mountain Valley Haven, Hayfork, CA; Project Number: 136–EE065/CA30–S011–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: September 22, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Southampton Arch Group Home, Portsmouth, VA; Project Number: 051–HD090/VA36–Q001–005.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: September 23, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Rainbow Village II, Houston, TX; Project Number: 114–EE079/TX24–S991–008.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: September 23, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Annie Mae's Prayer Garden Apartments, Ville Platte, LA; Project Number: 064–HD069/LA48–Q021–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: September 24, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: 646 South Pearl Street, Albany, NY; Project Number: 014–HD107/NY06–Q021–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: September 25, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Mt. St. Mary's, Tonawanda, NY; Project Number: 014–EE198/NY06–S001–004.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: September 25, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Goodson Manor, Farmville, VA; Project Number: 051–EE077/VA36–S001–004.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: September 26, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Laurel Creek, Cookeville, TN; Project Number: 086–EE039/TN43–S011–005.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: September 30, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.
Project/Activity: Flury Place, Elkridge, MD; Project Number: 052–HD034/MD06–Q981–004.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: July 7, 2003.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is

comparable in cost to similar projects developed in the area. The project experienced delays due to the need to resolve problems regarding the sewer line connection and to determine if the noise level was acceptable.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Montbello Volunteers of America (VOA) Elderly, Denver, CO; Project Number: 101–EE039/CO99–S001–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 29, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area. Also, additional time was needed for HUD to process the firm commitment application in order for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: PSCH Ozone Park Residence, Ozone Park, NY; Project Number: 012–HD100/NY36–Q001–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 6, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area. The project was delayed due to the sponsor's inability to obtain site control for the original site and the difficulty encountered in securing a replacement site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Belmont Boulevard II Apartments, Bronx, NY; Project Number: 012–EE237/NY36–S971–024.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 8, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area. The project incurred delays due to the need to resolve site remediation issues.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: St. Josephs Memorial Center (SJMC) Senior Housing, Yonkers, NY; Project Number: 012–EE265/NY36–S991–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 12, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area. The project was delayed due to a 3-year local approval process for compliance with the requirements of the Advisory Council on Historic Preservation, rezoning, and site preparation.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Bolton Senior Housing, Bolton, MA; Project Number: 023–EE080/MA06–S961–016.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 12, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area. The project was delayed due to local residents' objections to the project's design.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: The Pavillion at Immaculate Conception, Bronx, NY; Project Number: 012–EE247/NY36–S981–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 13, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area. The project experienced delays when it encountered problems securing and maintaining a general contractor.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Frederick Court, Brewster, MA; Project Number: 023–EE121/MA06–S001–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 13, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area. The project was

delayed due to issues in approving the ground lease for the site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: St. Francis Cabrini Gardens, Coram, NY; Project Number: 012–EE288/NY36–S001–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 13, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area. The project was delayed due to the lengthy local approval process for the establishment of an on-site sewerage treatment plant.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Union City Senior Housing, Union City, CA; Project Number: 121–EE136/CA39–S001–007.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 24, 2003.

Reason Waived: The sponsor exhausted all efforts to obtain additional funding. The project is economically designed and is comparable in cost to similar projects developed in the area. Time was needed for HUD to process the amended firm commitment and to review the initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.120(b) and 24 CFR 891.310(b)(1).

Project/Activity: Ozone Park Residence, Ozone Park, NY; Project Number: 012–HD100/NY36–Q001–005.

Nature of Requirement: Section 891.120(b) requires projects to comply with the Uniform Federal Accessibility Standards, section 504 of the Rehabilitation Act of 1973, and HUD's regulations governing new construction of multifamily housing projects and the design and construction requirements of the Fair Housing Act. Section 891.310(b)(1) requires that all entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 19, 2003.

Reason Waived: The sponsor indicated that fewer than five percent of the individuals that are served under their programs require accessible housing. The home is a two-story residence and it would be financially infeasible to make the home fully accessible. The sponsor already has two other sites that will be fully accessible, and there should be a sufficient number of accessible units for potential residents with physical disabilities.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.130(b).

Project/Activity: Timber Hills Independent Living Complex of Tippah County, Ripley, MS, Project Number: 065–HD024/MS26–Q001–001; Bridgeway Apartments II, Picayune, MS, Project Number: 065–HD025/MS26–Q001–002; Timber Hills Independent Living Complex of Tishomingo County, Luka, MS, Project Number: 065–HD026/MS26–Q011–001; Pine Hills Apartments, Gloster, MS, Project Number: 065–HD027/MS26–Q011–002.

Nature of Requirement: Section 891.130(b) prohibits an identity of interest between the sponsor or owner (or borrower, as applicable). Section 891.130(b) also prohibits an identify of interest between the sponsor or owner and any development team member or among development team members until two years after final closing

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 15, 2003.

Reason Waived: The waiver was to permit the paralegal in the project's law firm to serve as a paid consultant for the projects because the consultant for the projects died. In order not to delay the closing of these projects any further, the waiver was granted.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Reseda Horizon, Northridge, CA; Project Number: 122–HD136/CA16–Q001–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 1, 2003.

Reason Waived: The sponsor had to change sites and needed time to prepare contract documents for the new site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Myrtle Davis Senior Complex, Milwaukee, WI; Project Number: 075–EE095/WI39–S001–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 2, 2003.

Reason Waived: Additional time was needed for HUD to process the firm commitment application in order for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Las Golondrinas, San Jose, CA; Project Number: 121–EE138/CA39–S001–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 3, 2003.

Reason Waived: The sponsor needed time to obtain additional funds. Additional time was also needed to conduct extensive reviews of the remediation of prior site contamination.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Stanton Accessible Apartments, Stanton, CA; Project Number: 143–HD008/CA43–Q981–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 7, 2003.

Reason Waived: Additional time was needed for HUD to process the firm commitment application in order for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Order of Ahepa (AHEP) 23–III Apartments, Montgomery, AL; Project Number: 062–EE046/AL09–S001–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 9, 2003.

Reason Waived: Additional time was needed to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Hillsborough County Volunteers Of America (VOA) Living Center III, Tampa, FL; Project Number: 067–HD080/FL29–Q001–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 9, 2003.

Reason Waived: More time was needed to obtain additional funds and to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Awakenings Village Apartments, Whittier, CA; Project Number: 122–HD140/CA16–Q001–011.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 9, 2003.

Reason Waived: Additional time was needed for HUD to process the firm commitment application in order for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Holiday Heights Volunteers Of America (VOA) Living Center, Bradenton, FL; Project Number: 067–HD079/FL29–Q001–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 9, 2003.

Reason Waived: More time was needed to obtain additional funds and to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: National Church Residence (NCR) North Fairmount, Cincinnati, OH; Project Number: 046–EE056/OH10–S001–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 9, 2003.

Reason Waived: Additional time was needed for HUD to prepare the firm commitment application in order for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: South Daytona Good Samaritan Housing, South Daytona Beach, FL; Project Number: 067–EE111/FL29–S001–011.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 11, 2003.

Reason Waived: Additional time was needed for HUD to process the firm commitment application in order for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Hemet Ability First, Hemet, CA; Project Number: 122–HD130/CA16–Q001–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 15, 2003.

Reason Waived: The project experienced significant delays due to a site change and the subsequent development of contract documents for the new site. HUD needed additional time to process the firm commitment application in order for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Hayworth Housing, Los Angeles, CA; Project Number: 122–HD118/CA16–Q991–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 15, 2003.

Reason Waived: The project incurred delays while the owner resolved an issue after one of the sites was rejected.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Melvin T. Walls Manor, Ypsilanti Township, MI; Project Number: 044–EE070/MI28–S000–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 15, 2003.

Reason Waived: More time was needed for the sponsor to acquire additional funding and to redesign portions of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and

Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Accessible Space, Incorporated, Birmingham, AL; Project Number: 062–HD041/AL09–Q981–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 15, 2003.

Reason Waived: The sponsor experienced lengthy delays due to the need to resolve project cost issues.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Washington Park Elderly, Chicago, IL; Project Number: 071–EE158/IL06–S001–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 15, 2003.

Reason Waived: Additional time was needed for HUD to process the firm commitment application in order for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Chandler Arms II, Columbus, OH; Project Number: 043–EE071/OH16–S001–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 15, 2003.

Reason Waived: Additional time was needed for the city to approve a zoning variance and for HUD to process and issue the firm commitment.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Harvard Square, Irvin, CA; Project Number: 143–HD011/CA43–Q001–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 15, 2003.

Reason Waived: Additional time was needed for the sponsor to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Legion Woods Apartments, New Haven, CT; Project Number: 017–HD028/CT26–Q001–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 15, 2003.

Reason Waived: More time was needed to obtain additional funds and to select a general contractor.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: JoMar of Zion, Oshkosh, WI; Project Number: 075–EE096/WI39–S001–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 16, 2003.

Reason Waived: Additional time was needed for the owner to prepare and for HUD to review the initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Rotary Village II, Del Rio, TX; Project Number: 115–EE057/TX59–S001–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 16, 2003.

Reason Waived: Additional time was needed for the owner to obtain the required tax exemption ruling from the Internal Revenue Service.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: McTaggert Court I, Stow, OH; Project Number: 042–HD089/OH12–Q001–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 21, 2003.

Reason Waived: Due to local opposition against several different sites identified for the project, the sponsor needed additional time to identify sites that would meet local zoning requirements.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Carrie P. Meek Manor, Miami, FL; Project Number: 066–EE071/FL29–S991–016.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 21, 2003.

Reason Waived: The project experienced delays due to site control problems. Additional time was needed to correct deficiencies in the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Providence St. Elizabeth House, Seattle, WA; Project Number: 127–EE032/WA19–S011–003.

Nature Of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 21, 2003.

Reason Waived: The project is part of a HOPE VI redevelopment of a public housing site that had been delayed due to third-party opposition and the need to resolve environmental site issues. Additional time was needed to finalize the HOPE VI redevelopment plans to permit construction of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: White Cone Senior Apartments, White Cone, AZ; Project Number: 123–EE077/AZ20–S001–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 23, 2003.

Reason Waived: The sponsor needed time to obtain additional funding. The sponsor also had problems securing an architect and contractor with bids within the project costs.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Mechanic Street Apartments, Marlboro, MA; Project Number: 023–HD131/MA06–Q971–012.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 24, 2003.

Reason Waived: Additional time was needed to review the initial closing documents and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Villa Seton, Port St. Lucie, FL; Project Number: 067–EE107/FL29–S001–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 31, 2003.

Reason Waived: HUD needed additional time to process the firm commitment application and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Spruce Landing, Kansas City, MO; Project Number: 084–HD036/MO16–Q001–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 31, 2003.

Reason Waived: Delays were experienced by the project due to difficulty in locating and negotiating a suitable site and an unexpected requirement by the city to complete a drainage study.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Ridgeview Terrace II, Ashtabula Township, OH; Project Number: 042–HD084/OH12–Q991–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 5, 2003.

Reason Waived: Due to local opposition to the project, the sponsor had difficulty obtaining necessary approval from the local authorities to proceed with the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Congress Street Apartments, New Port Richey, FL; Project Number: 067–HD077/FL29–Q001–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 6, 2003.

Reason Waived: The project was delayed due to third party opposition.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: North Capitol at Plymouth, Washington, DC; Project Number: 000–EE053/DC39–S001–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 12, 2003.

Reason Waived: Additional time was needed for the sponsor to obtain a building permit.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Loretto Heritage Apartments, Syracuse, NY; Project Number: 014–HD084/NY06–Q991–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 13, 2003.

Reason Waived: The sponsor needed additional time to locate an alternate site and to prepare the firm commitment documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Genesee Housing, Seattle, WA; Project Number: 127–HD028/WA19–Q011–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 4, 2003.

Reason Waived: Delay of the project was due to third party opposition regarding the demolition of another project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street,

SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: National Church Residence (NCR) of North Fairmount, Cincinnati, OH; Project Number: 046–EE056/OH10–S001–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 12, 2003.

Reason Waived: The project was delayed due to civil engineering revisions that were necessary as a result of the city's and EPA's requirements.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Villa at Marian Park, Akron, OH; Project Number: 042–EE112/OH12–S991–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 17, 2003.

Reason Waived: The project was delayed because of local opposition.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: West Kingsbridge Senior Housing, Bronx, NY; Project Number: 012–EE212/NY36–S961–030.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 22, 2003.

Reason Waived: Additional time was needed so the owner could complete site remediation and submit the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Providence Gamelin House Association, Seattle, WA; Project Number: 127–EE028/WA19–S001–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 23, 2003.

Reason Waived: Additional time was needed to resolve a legal dispute among the Seattle Housing Authority, the landowner, and the Seattle School District.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Flury Place, Elkridge, MD, Project Number: 052–HD034/MD06–Q981–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 23, 2003.

Reason Waived: Additional time was needed for the project to reach initial closing. The project incurred delays in obtaining the necessary building permit from Howard County.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Ada S. McKinley IV, Chicago, IL; Project Number: 071–HD110/IL06–Q981–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 29, 2003.

Reason Waived: The sponsor needed additional time to obtain the building permits from the city of Chicago.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Park View Apartments, Fort Myers, FL; Project Number: 066–EE082/FL29–S011–044.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 30, 2003.

Reason Waived: Additional time was needed for the firm commitment application to be submitted and for HUD to review the partial release of security from the adjacent Section 811 project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Hall Commons, Bridgeport, CT; Project Number: 017–EE063/CT26–S001–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 30, 2003.

Reason Waived: Additional time was needed for the city to complete the clean-up of the oil contamination on the site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.205.

Project/Activity: Timber Lawn Place, Jackson, MS; Project Number: 026–EE034/MS26–S011–003.

Nature of Requirement: Section 891.205 requires Section 202 project owners to have tax-exempt status under Section 501(c)(3) or (c)(4) of the Internal Revenue Code prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 24, 2003.

Reason Waived: The Internal Revenue Services was expected to issue the required tax-exemption ruling soon.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.205.

Project/Activity: Gates Gardens, Brooklyn, NY; Project Number: 012–EE312/NY36–S011–006.

Nature of Requirement: Section 891.205 requires Section 202 project owners to have tax-exempt status under Section 501(c)(3) or (c)(4) of the Internal Revenue Code prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 24, 2003.

Reason Waived: The Internal Revenue Service was expected to issue the required tax-exemption ruling within six months of the initial closing of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.310(b)(1) and (b)(2).

Project/Activity: Share X, East Patchogue, NY; Project Number: 012–HD108/NY36–Q011–005.

Nature of Requirement: Section 891.310(b)(1) requires that all entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities. Section 891.310(b)(2) requires that in projects for chronically mentally ill individuals, a minimum of 10 percent of all dwelling units in an independent living facility (or 10 percent of all bedrooms and bathrooms in a group home, but a least one of each such space) must be designed to be accessible or adaptable for persons with disabilities.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 24, 2003.

Reason Waived: The project consists of the rehabilitation of four group homes for independent living for the chronically mentally ill, each serving three residents. One home will be fully accessible. The sponsor indicated that, of the 300 individuals they served at over 150 sites, few residents required the use of accessible housing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Donald Sykes Villa, Stratford, WI; Project Number: 075–EE079–NP/WAH.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that received reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 16, 2003.

Reason Waived: The Milwaukee Multifamily Program Center requested permission to waive the age requirements applicable to the subject property, enabling the owner/managing agent to rent to non-elderly applicants between the ages of 55 and 62 years. The granting of this waiver provided accessible housing for these applicants and allowed the owner flexibility to rent its vacant units and achieve full occupancy so the project would not fail. The waiver is effective for one year after the date of approval.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Casa Retirement Center, Casa, AR; Project Number: 082–EE016.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that received reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include at least one person who is at least 62 years of age at the time of initial occupancy.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 18, 2003.

Reason Waived: The Fort Worth Multifamily Hub requested permission for a waiver of the age requirement and a reduction of the income requirement from very low-income to low income. Despite active marketing through media such as newspapers, churches, flyers, and referral to housing authorities, units remained vacant. This waiver allowed the property to be rented to non-elderly persons between the ages of 55 and 62 years and allowed applicants to meet the low-income eligibility requirements. This, in turn, allowed the owner additional flexibility in its attempt to rent these vacant units and perhaps start a waiting list. In addition, these waivers did not deprive any currently eligible person of affordable rental housing. This waiver was granted for one year from the date of approval.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: John Davis Manor Apartments, Patterson, AR; Project Number: 082–EE096.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that received reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 21, 2003.

Reason Waived: The Fort Worth Multifamily Hub requested permission to waive the age and income requirements for this project. The property was experiencing difficulty renting up and maintaining sustaining occupancy. The owner needed flexibility to rent unoccupied units to alleviate the current financial problems at the project. This waiver allowed the property to admit applicants who did not meet the definition of very low-income elderly persons. The property was allowed to rent to low-income families who were not elderly but were between the ages of 50 and 62 years. These efforts would arrest the current financial drain and attempt to prevent foreclosure of the property. The waiver is in effect for one year from the date of approval.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: The Maples II, Hillsboro, OR; Project Number: 126–EE030.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that received reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 20, 2003.

Reason Waived: The Northwest/Alaska Multifamily Hub requested permission to waive the age requirements of the subject property. The owner/managing agent of the subject project had requested a waiver of the elderly requirements, because the property manager was unfamiliar with the admission requirements for the Section 202 Housing for the Elderly program, admitted seven ineligible handicapped residents, and signed leases with two additional ineligible handicapped families. The owner/managing agent had requested permission to continue to provide housing to the nine ineligible residents or families. The owner/managing agent of this property may continue to house the nine ineligible handicapped residents. Upon relocation of any ineligible resident or family, the owner must accept only eligible applicants. This waiver is effective for one year from date of approval.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000, telephone (202) 708–3730.

III. Regulatory Waivers Granted By the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 761.30

Project/Activity: Request submitted by the Reno Sparks Indian Colony (RSIC), located in Reno, Nevada, for a one-year extension of its Fiscal Year (FY) 2000 Indian Housing Drug Elimination Program (IHDEP) Grant.

Nature of Requirement: The regulations at 24 CFR 761.30 allow the area Office of Native American Programs (ONAP) to grant a six-month extension beyond the original grant period, if the request is submitted prior to the termination of the grant. However, only through a waiver of the regulatory requirement may extensions of time beyond the regulatory six-month period be granted.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 7, 2003.

Reason Waived: The RSIC experienced delays related to winter storms. In addition, Section 6 of Executive Order 13175, ''Executive Order on Consultation and Cooperation with Tribal Governments,'' of November 6, 2000, requires HUD to consider applications for regulatory waivers with a general view of increasing opportunities for utilizing flexible policy approaches.

Contact: Deborah Lalancette, Director, Grants Management, Denver Program ONAP, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202–5733, telephone (303) 675–1625.

• *Regulation:* 24 CFR 761.30

Project/Activity: Request submitted by the Calista Corporation, located in Anchorage, Alaska, for an additional time extension of its FY 2000 IHDEP Grant.

Nature of Requirement: The regulations at 24 CFR 761.30 allow the area ONAP to grant a six-month extension beyond the original grant period if the request is submitted prior to the termination of the grant. However, only through a waiver of the regulatory requirement may extensions of time beyond the regulatory six-month period be granted.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 16, 2003.

Reason Waived: The Program Director for the grant resigned early in 2003, complicating coordination of grant activities. In addition, the Calista Elders Council, the grant subrecipient, experienced delays in project implementation due to a move from Anchorage to Bethel and difficulties in hiring a project coordinator.

Contact: Deborah Lalancette, Director, Grants Management, Denver Program ONAP, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202, telephone (303) 675–1625.

• *Regulation:* 24 CFR 905.10.

Project/Activity: City of Columbia (Missouri) Housing Authority.

Nature of Requirement: Section 905.10 requires replacement housing factor (RHF) funds to be used to provide public housing rental replacement housing. The regulation limits RHF funds to rental replacement housing and does not include homeownership housing.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: August 12, 2003.

Reason Waived: The housing authority requested a waiver of the regulation in order to use RHF funds for homeownership activities, as provided in section 9(d)(1)(J) of the U.S. Housing Act of 1937. The use of RHF funds for homeownership activities is permitted by statute and consistent with HUD's mission.

Contact: William C. Thorson, Director, Office of Capital Improvements, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–1640.

• *Regulation:* 24 CFR 941.102(a)(2).

Project/Activity: Wilmington (Delaware) Housing Authority.

Nature of Requirement: A public housing agency (PHA) may develop new public housing by using the turnkey method. Developers must provide the site, design, and program financing. The PHA pays the turnkey developer upon completion of construction and acceptance.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 14, 2003.

Reason Waived: The PHA would be able to achieve substantial cost savings by using an existing site and providing direct funding to the contractor during construction.

Contact: William C. Thorson, Director, Office of Capital Improvements, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–1640.

• *Regulation:* 24 CFR 941.606(n)(1)(ii)(B).

Project/Activity: Metropolitan Gardens HOPE VI Project AL09URD001I197, Birmingham, AL.

Nature of Requirement: The provision requires that, if the partner or owner entity (or any other entity with an identity of interest with such parties) wants to serve as a general contractor for the project or development, it may award itself the construction contract only if it can demonstrate to HUD's satisfaction that its bid is the lowest submitted in response to a public request for bids.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: September 3, 2003.

Reason Waived: The waiver was approved in order for Integral/Doster Metropolitan Gardens Construction LLC to complete Phase I of the Metropolitan Gardens project. The construction cost provided by Integral/Doster is $14,263,429, which is $59,963 lower than the independent estimator's cost estimate of $14,323,392, therefore satisfying HUD's condition that the construction contract be less than or equal to the independent cost estimate.

Contact: Milan Ozdinec, Deputy Assistant Secretary, Office of Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 401–8812.

• *Regulation:* 24 CFR 982.207(b)(3) and 983.203(a)(3).

Project/Activity: Dartmouth Hotel project, Boston Housing Authority (BHA), Boston, MA. The BHA requested a waiver to permit a selection preference for homeless persons who have a serious and persistent mental illness that is severe enough to interfere with one or more activities of daily living.

Nature of Requirement: The regulation at 24 CFR 982.207(b)(3) States that a housing agency may adopt a preference for admission of families that include a person with disabilities, but may not adopt a preference for persons with a specific disability. The regulation at 24 CFR 983.203(a)(3) prohibits site-specific waiting lists under the project-based assistance (PBA) program.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: September 26, 2003.

Reason Waived: The BHA demonstrated that separate housing and services provided at the Dartmouth Hotel would enable the target population to have the same opportunity as others to enjoy the benefits of secure affordable housing. Without units designated for the target population, they would not be able to maintain their position on the BHA's tenant-based or project-based waiting list due to not having a fixed address, not understanding materials sent to them, and frequent hospitalizations. The target population would also not be successful in the housing search process, even if a voucher were issued, due to the stigma associated with mental illness, lack of landlord references, and bad credit. To ensure that the target population would be housed at the Dartmouth Hotel, for which its occupancy was intended, the BHA must maintain a PBA site-specific waiting list for this project.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority of Washington County (HAWC), Hillsboro, OR. The HAWC requested an exception payment standard that exceeded 120 percent of the fair market rent as a reasonable accommodation for a housing choice voucher participant who was elderly and nearly blind.

Nature of Requirement: 24 CFR 982.505(d) allows a PHA to approve a higher payment within the basic range for a family that includes a person with disabilities as a reasonable accommodation in accordance with 24 CFR part 8.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: August 19, 2003.

Reason Waived: Approval of the waiver was granted to allow the participant to continue to lease the space for her manufactured home near her son who assisted her with daily living activities.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Arlington County Department of Human Services (ACDHS), Arlington, VA. The ACDHS requested an exception payment standard that exceeded 120 percent of the fair market rent as a reasonable accommodation for a housing choice voucher participant who suffered from multiple medical conditions.

Nature of Requirement: 24 CFR 982.505(d) allows a PHA to approve a higher payment within the basic range for a family that includes a person with disabilities as a reasonable accommodation in accordance with 24 CFR part 8.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: August 18, 2003.

Reason Waived: Approval of the waiver was granted to allow the participant to locate suitable housing to enable her to maintain her health and live independently.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: King County Housing Authority (KCHA), Seattle, WA. The KCHA requested an exception payment standard that exceeded 120 percent of the fair market rent as a reasonable accommodation for a housing choice voucher participant who has developmental disabilities.

Nature of Requirement: 24 CFR 982.505(d) allows a PHA to approve a higher payment within the basic range for a family that includes a person with disabilities as a reasonable accommodation in accordance with 24 CFR part 8.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 21, 2003.

Reason Waived: Approval of the waiver was granted to allow a housing choice voucher participant to continue to lease the manufactured home lot space where he then lived and received supportive services and training in life skills. Any disruption in his daily routine would have caused a hardship on the participant.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority of the City of Los Angeles (HACLA), Los Angeles, CA. The HACLA requested an exception payment standard that exceeded 120 percent of the fair market rent as a reasonable accommodation for a housing choice voucher participant that had congenital glaucoma and severe trauma to her left eye.

Nature of Requirement: 24 CFR 982.505(d) allows a PHA to approve a higher payment within the basic range for a family that includes a person with disabilities as a reasonable accommodation in accordance with 24 CFR part 8.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 18, 2003.

Reason Waived: Approval of the waiver was granted to allow a housing choice voucher participant to lease her current unit with the necessary services. The building has an elevator, which is essential because she cannot negotiate stairs. Also, she is familiar with the area in which she lives.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(D).

Project/Activity: Housing Authority of the City of Los Angeles (HACLA), Los Angeles, CA. The HACLA requested an exception payment standard that exceeded 120 percent of the fair market rent as a reasonable accommodation for two families participating in the housing choice voucher program.

Nature of Requirement: 24 CFR 982.505(d) allows a PHA to approve a higher payment within the basic range for a family that includes a person with disabilities as a reasonable accommodation in accordance with 24 CFR part 8.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 18, 2003.

Reason Waived: Approval of the waiver was granted to allow the families to lease their current units because it would allow them to maintain their health and live independently.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Boston Housing Authority (BHA), Boston, MA. The BHA requested an exception payment standard that exceeded 120 percent of the fair market rent as a reasonable accommodation for a housing choice voucher participant who was quadriplegic and suffered from increased autonomic dysreflexia.

Nature of Requirement: 24 CFR 982.505(d) allows a PHA to approve a higher payment within the basic range for a family that includes a person with disabilities as a reasonable accommodation in accordance with 24 CFR part 8.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 17, 2003.

Reason Waived: Approval of the waiver was granted to allow the participant to locate suitable housing to enable him to live independently.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II, subpart E, of the January 16, 2001, **Federal Register** notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Miami-Dade Housing Agency (MDHA), Miami, FL. The MDHA requested exceptions to the initial guidance to permit it to attach PBA to the following projects in census tracts with high poverty rates: Tequesta Knoll Apartments, Florida City Apartments, Villages of Naranja, Park City Apartments, and Miami River Apartments.

Nature of Requirement: Section II, subpart E, of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 7, 2003.

Reason Waived: Approval of the exception for deconcentration was granted for Tequesta Knoll Apartments, Florida City Apartments, and Miami River Apartments, since the projects were located in a HUD-designated Empowerment Zone, the purpose of which is to open new businesses and create jobs, housing, and new educational and healthcare opportunities for thousands of Americans.

Approval was granted for Villages of Naranja, since 439 private market-rate single-family homes would be developed in the census tract. In addition, boat building and general construction companies have either opened new businesses or relocated to the area, thus expanding economic opportunities.

Approval was granted for Park City Apartments, since Safire Aircraft Company would be opening its headquarters at the Opa-locka Airport, which is within five miles of the project, thereby creating over 1,000 jobs over the next three years.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II, subpart E, of the January 16, 2001, **Federal Register** notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Indianapolis Housing Authority (IHA), Indianapolis, IN. The IHA requested an exception to the initial guidance to permit it to attach PBA to Mozel Saunders, a project located in a census tract with a poverty rate of 34.1 percent.

Nature of Requirement: Section II, subpart E, of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 15, 2003.

Reason Waived: Approval of the exception for deconcentration was granted, since (1) 34 units would be demolished and another 45 units were proposed for demolition where none had been proposed before, (2) only 25 percent of the units would have PBA attached, and (3) the remaining 75 percent of the units would be rented at market rate rents. The net reduction of low-income housing units in the census tract combined with an increase in the percentage of market rate units in the project is consistent with the goal of deconcentrating poverty.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II, subpart E, of the January 16, 2001, **Federal Register** notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Massachusetts Department of Housing and Community Development (MDHCD), Boston, MA. The MDHCD requested an exception to the initial guidance to permit it to attach PBA to Casa Maribel, a project located in a census tract in the City of Chelsea.

Nature of Requirement: Section II, subpart E, of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: July 15, 2003.

Reason Waived: Approval of the exception for deconcentration was necessary, since the 1990 census poverty rate was 25 percent. In addition to the fact that the poverty rate had declined almost four percentage points since the last census, housing prices had increased 57 percent in the preceding two years, and rental costs had increased as well. Economic development and job creation was demonstrated in the relocation or expansion of three companies.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II, subpart E, of the January 16, 2001, **Federal Register** notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Orange County Department of Housing and Community Development (OCDHCD), Carrboro, NC. The OCDHCD was seeking an exception to the initial guidance to attach PBA to Club Nova Apartments for extremely low-income persons with disabilities. According to the documentation provided by Club Nova Apartments LLC, it does not intend to target a specific disability.

Nature of Requirement: Section II subpart E of the Initial Guidance requires that all new PBA agreements or housing assistance payments (HAP) contracts be for units in census tracts with poverty rates of less than 20 percent, unless HUD specifically approves an exception.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: September 12, 2003.

Reason Waived: Club Nova Apartments is located in census tract 107.3 with a poverty rate of 23.3 percent. Census tract 107.3 is adjacent to the University of North Carolina at Chapel Hill and, according to Club Nova Apartments LLC, had a disproportionately high population of university students, both undergraduate and graduate. The low income of these residents during their period of higher education distorted the incidence of poverty that showed up in this census tract. Club Nova Apartments LLC believed that a significant amount of these students were included in the number reporting income below the poverty level and, since students were transient in their geography and their economic status, should not be included in the poverty rate calculation. Excluding 1,154 students from the 1,184 individuals reporting income below the poverty level brought down the poverty rate to less than 1 percent. Since the adjusted poverty rate in census tract 107.3 would be below 20 percent, an exception was granted.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II, subpart E, of the January 16, 2001, **Federal Register** notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Chicago Housing Authority (CHA), Chicago, IL. The CHA requested an exception to the initial guidance to permit it to attach PBA to Evergreen Towers II Senior Housing Development.

Nature of Requirement: Section II, subpart E, of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: September 22, 2003.

Reason Waived: Approval of the exception for deconcentration was granted, since census data updated in 2003 indicated that the poverty level of the census tract had decreased due to private market activity and commercial development. In addition, the 134 units in the Cabrini Green building that was in the same census tract would be demolished in 2005, further reducing the number of low-income families in the census tract. There would not be one-for-one replacement of the demolished public housing units, and any new public housing units would be placed within mixed income developments.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* Section II, subpart E, of the January 16, 2001, **Federal Register** notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance.

Project/Activity: Housing Authority of the City of Atlanta (HACA), Atlanta, GA. The HACA requested exceptions to the initial guidance to permit it to attach PBA to the following projects in census tracts with high poverty: Atlanta Station, Columbia Highlands Senior Residence, Columbia at Sylvan Hills, Northside Village Apartments, Renaissance at Kings, and Terrace at Cornerstone.

Nature of Requirement: Section II, subpart E, of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: September 25, 2003.

Reason Waived: Approval of the exception to deconcentration was granted for Atlanta Station, since it will be located in the Village section of the Atlantic Station Brownfield redevelopment site. The entire project is a 140-acre environmental development of the former Atlantic Steel Mill in midtown Atlanta. Upon completion, the new community will include 12 million square feet of retail, office, residential, and hotel space, as well as 11 acres of public parks. It is anticipated that there will be between 3,000 and 5,000 new residential units for both rental and homeownership.

Approval was granted for Columbia Highlands Senior Residence, since this project is an integral part of the larger West Highlands at Heman E. Perry Boulevard community revitalization, an HACA HOPE VI project. The purpose of the HOPE VI program is to transform public housing which includes changing the physical shape of public housing; establishing positive incentives for resident self-sufficiency and comprehensive services that empower residents; lessening concentrations of poverty by placing public housing in non-poverty neighborhoods and promoting mixed-income communities; and forging partnerships with other agencies, local governments, nonprofit organizations, and private businesses to leverage support and resources. Toward that end, 1,072 public housing units have been demolished and will be replaced with 556 public housing units, 212 low-income housing tax credit units, 632 market rate units, 40 affordable homeownership units, and 210 market rate homeownership units.

Approval was granted for Columbia at Sylvan Hills, since the project is located in one of the fastest growing areas in the city of Atlanta with sales prices of single-family homes more than doubling in the past five years. The project will be the first phase of a transit-orientated development at the

Lakewood-Ft. McPherson Metropolitan Atlanta Rapid Transportation Authority (MARTA site). Pedestrian access will be provided from the development to the MARTA station. Further development around the project will consist of an office and retail building adjacent to the site.

Approval was granted for Northside Village Apartments, since the development is part of Phase I of the redevelopment effort in this area of Atlanta. Phase I will include approximately 4,000 square feet of retail space on Northside Drive thereby providing new economic opportunities. Future development plans within a half-mile of Northside Village include the Georgia Aquarium and Centennial Olympic Park, a 500-unit condominium housing development.

Approval was granted for Renaissance at Kings Ridge, since six hundred substandard apartments that housed low-income families were demolished several years ago in the Kings Ridge Development area. Information was not available regarding the exact income mix of the families that occupied these demolished units. However, they will be replaced with approximately 300 to 400 rental and homeownership units, of which Renaissance at Kings Ridge is a part. The only low-income component of the 300 to 400 replacement housing units will be the 48 PBA units.

Approval was granted for Terrace at Cornerstone, since the development will be located in the West End neighborhood, which is located two miles southwest of Atlanta's downtown central business district. The project will feature apartments above retail that should provide economic opportunities for the resident families. There are future development plans for the community that will allow for both retail and housing development.

Contact: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

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Federal Register

Thursday,
March 11, 2004

Part III

Federal Election Commission

11 CFR Parts 100, 102, 104, 106, and 114
Political Committee Status; Proposed Rule

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 102, 104, 106, and 114

[Notice 2004–6]

Political Committee Status

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission is seeking comment on whether to amend the definition of ''political committee'' applicable to nonconnected committees. The Commission is also considering amending its current regulations to address when disbursements for certain election activity should be treated as ''expenditures.'' Related amendments to the allocation regulations for nonconnected committees and separate segregated funds are also under consideration to determine whether those regulations need further refinement. While the Commission requests comments on proposed changes to its rules, it has made no final decisions on any of the proposed revisions in this notice. Further information is provided in the supplementary information that follows.

DATES: The Commission will hold a hearing on these proposed rules on April 14 and 15, 2004, at 10 a.m. Commenters wishing to testify at the hearing must submit their request to testify along with their written or electronic comments by April 5, 2004. Commenters who do not wish to testify must submit their written or electronic comments by April 9, 2004.

ADDRESSES: All comments should be addressed to Ms. Mai T. Dinh, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. Electronic mail comments should be sent to *politicalcommitteestatus@fec.gov* and must include the full name, electronic mail address and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. The Commission will post public comments on its Web site. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, Mr. J. Duane Pugh Jr., Senior Attorney, or Mr. Daniel E. Pollner, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Bipartisan Campaign Reform Act of 2002 (''BCRA''), which amended the Federal Election Campaign Act (''FECA'' or ''the Act''), was signed into law on March 27, 2002. The Supreme Court upheld most of BCRA in *McConnell* v. *FEC,* 540 U.S. —, 124 S. Ct. 619 (2003).

McConnell recognized that regulation of certain activities that affect Federal elections is a valid measure to prevent circumvention of FECA's contribution limitations and prohibitions. Consequently, the Commission is undertaking this rulemaking to revisit the issue of whether the current definition of ''political committee'' adequately encompasses all organizations that should be considered political committees subject to the limitations, prohibitions and reporting requirements of FECA.

FECA, and the Commission's regulations, with certain exceptions, define a political committee as ''any committee, club, association, or other group of persons which receives contributions aggregating in excess of $1,000 in a calendar year or which makes expenditures aggregating in excess of $1,000 during a calendar year.'' 2 U.S.C. 431(4)(A); 11 CFR 100.5(a). FECA subjects political committees to certain registration and reporting requirements, as well as limitations and prohibitions on the contributions they receive and make, that do not apply to organizations that are not political committees. *See, e.g.,* 2 U.S.C. 432, 433, 441a, 441b; 11 CFR part 102.

While the statutory and regulatory definitions of ''political committee'' set forth above depend solely on the dollar amount of annual contributions received and expenditures made, the Supreme Court, in *Buckley* v. *Valeo,* explained that to fulfill the purposes of FECA, the definition of political committee ''need only encompass organizations that are under the control of a candidate or *the major purpose of which is the nomination or election of a candidate,*'' and does not ''reach groups engaged purely in issue discussion.'' *Buckley* v. *Valeo,* 424 U.S. 1, 79 (1976) (emphasis added). The Supreme Court has reaffirmed the applicability of the ''major purpose'' test in subsequent opinions. *See FEC* v. *Massachusetts Citizens for Life, Inc.,* 479 U.S. 238 (1986)(''*MCFL*''). Therefore, the definition of ''political committee'' arguably should have two elements: First, the $1,000 contribution or expenditure threshold;[1] and second, the major purpose test for organizations not controlled by Federal candidates.

The FECA generally defines ''expenditures'' as ''(i) any purchase, payment, distribution, loan advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office; and (ii) a written contract, promise, or agreement to make an expenditure.'' 2 U.S.C. 431(9)(A). The definition also includes a lengthy list of exceptions. 2 U.S.C. 431(9)(B). Commission regulations at 11 CFR part 100, subparts D and E implement this statutory definition. Since the enactment of the FECA, there have been debates about whether certain activities, not specifically mentioned in the statutory or regulatory definitions, were expenditures. BCRA did not amend the definition of expenditure, but instead categorized certain election-related activities into new statutory definitions. *McConnell* shed light on what the Supreme Court considered to be activities that could affect Federal elections. *See McConnell,* 124 S. Ct. at 673–675 and 696–697 (upholding BCRA's provisions concerning Federal election activity and electioneering communications).

This notice of proposed rulemaking (''NPRM'') explores whether and how the Commission should amend its regulations defining whether an entity is a nonconnected political committee[2] and what constitutes an ''expenditure'' under 11 CFR 100.5(a) or 11 CFR part 100, subparts D and E. With respect to the second element of the definition of ''political committee,'' the Commission's regulations do not expressly incorporate the ''major purpose'' test into 11 CFR 100.5(a). However, the Commission does apply the ''major purpose'' test when assessing

[1] This threshold, however, does not apply to separate segregated funds and state or local party committees. *See* 2 U.S.C. 431(4)(B) and (C) and 11 CFR 100.5(b) and (c).

[2] The Commission is not proposing to change the definition of ''political committee'' applicable to party committees, Federal candidates' authorized committees or separate segregated funds.

whether an organization is a political committee. See, *e.g.*, Advisory Opinions (''AOs'') 1994–25 and 1995–11. In this NPRM, the Commission is seeking comment on whether to amend its regulations to incorporate the major purpose test into the regulatory definition of ''political committee'' in 11 CFR 100.5(a). Furthermore, the Commission seeks comment on whether the effective date for any final rules that the Commission may adopt should be delayed until after the next general election and whether there is a legal basis for delaying the effective date. The Commission also seeks comment on whether changing the definition of basic terms such as ''political committee,'' ''expenditure,'' and ''contribution,'' in the middle of an election year would cause undue disruption to the regulated community.[3]

II. Expenditures

In *Buckley,* 424 U.S. at 62–63, the Supreme Court first examined FECA's definitions of ''expenditure'' and ''contribution'' and their operative phrase, which is ''for the purpose of influencing any election for Federal office.'' *See* 2 U.S.C. 431(8) and (9). The Supreme Court found that the ambiguity of this phrase posed constitutional problems as applied to expenditures made by individuals other than candidates and organizations other than political committees. *Buckley,* 424 U.S. at 77. To avoid the vagueness and potential overbreadth of the statutory definition, *Buckley* adopted a narrowing construction so that FECA's definition of ''expenditure'' reached ''only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate.'' *Buckley,* 424 U.S. at 79–80.[4]

A. McConnell v. FEC, 540 U.S. —, 124 S. Ct. 619 (2003).

The Supreme Court clarified in *McConnell* that *Buckley's* ''express advocacy'' test is not a constitutional barrier in determining whether an expenditure is ''for the purpose of influencing any Federal election.'' *McConnell,* 124 S.Ct. at 688–89. The Supreme Court explained: ''In narrowly reading the FECA provisions in *Buckley* to avoid problems of vagueness and overbreadth, we nowhere suggested that a statute that was neither vague nor overbroad would be required to toe the same express advocacy line.'' *McConnell,* 124 S.Ct. at 688.

With this understanding of express advocacy, the Supreme Court found constitutional Congress' regulation of two types of activities addressed in BCRA: ''Federal election activity,'' as defined in 2 U.S.C. 431(20), and ''electioneering communication,'' as defined in 2 U.S.C. 434(f)(3)(A)(i). *McConnell,* 124 S.Ct. at 670–77 and 685–99. In upholding BCRA's amendments to FECA, the Supreme Court discussed the effects that Federal election activities and electioneering communications have on Federal elections.

1. Federal Election Activities

As the Supreme Court observed in *McConnell,* ''[t]he core of [section 441i(b)] is a straightforward contribution regulation: It prevents donors from contributing nonfederal funds to state and local party committees to help finance ''Federal election activity.' '' 124 S.Ct. at 671.[5] The Supreme Court noted that this regulation arises out of Congressional recognition of ''the close ties between federal candidates and state party committees.'' *Id.,* at 670. ''Federal election activity'' encompasses four distinct categories of activities: (1) Voter registration activity during the 120 days preceding a regularly scheduled Federal election; (2) voter identification, get-out-the-vote (''GOTV''), and generic campaign activity that is conducted in connection with an election in which a candidate for Federal office appears on the ballot; (3) a public communication that refers to a clearly identified Federal candidate and that promotes, supports, attacks, or opposes a candidate for that office; and (4) the services provided by certain political party committee employees. *See* 2 U.S.C. 431(20) through (24); 11 CFR 100.24 through 100.28. *McConnell* referred to all four types of Federal election activities as ''electioneering,'' and found BCRA's definition of Federal election activities to be ''narrowly focused'' on ''those contributions to state and local parties that can be used to benefit federal candidates directly.'' *McConnell,* 124 S.Ct. at 671 and 674.

Considering the first two types of Federal election activities, which include certain voter registration, voter identification, GOTV and generic campaign activities, the Supreme Court determined that all of these activities ''confer substantial benefits on federal candidates.'' *McConnell,* 124 S.Ct. at 675. The Supreme Court also stated that ''federal candidates reap substantial rewards from any efforts that increase the number of like-minded registered voters who actually go to the polls.'' *Id.,* 124 S.Ct. at 674. *McConnell* described the factual record as ''show[ing] that many of the targeted tax-exempt organizations engage in sophisticated and effective electioneering activities for the purpose of influencing elections, including waging broadcast campaigns promoting or attacking particular candidates and conducting large scale voter registration and GOTV.'' *Id.,* 124 S.Ct. at 678 n.68. Like the first two types, public communications that promote, support, attack, or oppose a clearly identified Federal candidate, ''also undoubtedly have a dramatic effect on Federal elections. Such ads were a prime motivating force behind BCRA's passage * * *. [A]ny public communication that promotes or attacks a clearly identified federal candidate directly affects the election in which he is participating.'' *Id.,* 124 S.Ct. at 675. Because the fourth type of Federal election activities applies on its face only to certain political party committees, it is not considered further in this proposal. 2 U.S.C. 431(20)(A)(iv).

2. Electioneering Communications

An ''electioneering communication'' is any broadcast, cable, or satellite communication that refers to a clearly identified Federal candidate, is publicly distributed for a fee within 60 days before a general election or 30 days before a primary election or convention, and is targeted to the relevant electorate. *See* 2 U.S.C. 434(f)(3)(A)(i); 11 CFR 100.29. For communications that refer to congressional candidates, targeting means the communication can be received by 50,000 persons in the relevant State or congressional district. 2 U.S.C. 434(f)(3)(C); 11 CFR 100.29(b)(5). For communications that refer to presidential candidates in the nomination context, ''publicly distributed'' means the communication

[3] By way of historical background, on March 7, 2001, the Commission published an Advance Notice of Proposed Rulemaking (''ANPR'') seeking comment on the definitions of ''political committee,'' ''contribution'' and ''expenditure.'' *See* ''Definition of Political Committee; Advance Notice of Proposed Rulemaking,'' 66 FR 13681 (Mar. 7, 2001). After receiving comments on the ANPR, the Commission voted on September 27, 2001, to hold that rulemaking in abeyance pending changes in legislation, future judicial decisions, or other action. The ANPR and related comments are available on the FEC's Web site at: *http://www.fec.gov/register.htm* under ''Definition of Political Committee.'' This NPRM is a separate proceeding.

[4] A communication refers to a clearly identified candidate if it includes ''the candidate's name, nickname, photograph, or drawing'' or if ''the identity of the candidate is otherwise aparent through unambiguous reference [or] through unambiguous reference to his or her status a candidate.'' 11 CFR 100.17.

[5] The Supreme Court acknowledged that the Levin Amendment ''carves out an exception to this general rule.'' *McConnell,* 124 S.Ct. at 671.

can be received by 50,000 persons in the relevant State prior to its presidential primary election or anywhere in the United States prior to the presidential nominating convention. 11 CFR 100.29(b)(3)(ii). BCRA establishes disclosure requirements for persons who make electioneering communications. 2 U.S.C. 434(f); 11 CFR 104.20. *McConnell* upheld regulation of electioneering communications against a facial challenge, explaining that the definition of ''electioneering communication'' serves ''to replace the narrowing construction of FECA's disclosure provisions adopted by this Court in *Buckley,*'' which, for nonpolitical committee groups, was the express advocacy construction. *McConnell,* 124 S.Ct. at 686 and 695. In so holding, the Court observed that ''the definition of ''electioneering communication'' raises none of the vagueness concerns that drove our analysis in *Buckley.*'' *Id.,* at 689.

BCRA also amended the definition of ''contribution or expenditure'' in 2 U.S.C. 441b to include any payment for an electioneering communication, thereby expressly prohibiting corporations and labor organizations from using their general treasury funds to pay for electioneering communications. *McConnell* described electioneering communications subject to 2 U.S.C. 441b as ''communications that are intended to, or have the effect of, influencing the outcome of federal elections.'' *McConnell,* 124 S.Ct. at 654.

BCRA further provides that any disbursement for an electioneering communication that is coordinated with a candidate, candidate authorized committee, or a Federal, State, or local political party committee shall be treated as a contribution to the candidate or the candidate's party and as an expenditure by that candidate or party. 2 U.S.C. 441a(a)(7)(C).

In rejecting various challenges to BCRA's electioneering communication requirements, the Supreme Court addressed the purpose and effect of electioneering communications in several instances. *McConnell* concluded that while advertisers seeking to evade the express advocacy line create advertisements that ''do not urge the viewer to vote for or against a candidate in so many words, they are no less clearly intended to influence the election.'' *McConnell,* 124 S.Ct. at 689. The Supreme Court also referred a second time to the use of electioneering communications ''to influence federal elections'' and quoted approvingly from the decision below, which referred to electioneering communications as either ''designed to influence federal elections'' or, in fact, ''influencing elections.'' *Id.,* at 691 (*quoting McConnell* v. *FEC,* 251 F.Supp.2d 176, at 237 (D.D.C. 2003)). The Supreme Court also concluded that ''the vast majority'' of advertisements that qualify as electioneering communications had an ''electioneering purpose,'' which the Court equated with advertisements that are ''intended to influence the voters' decisions and [that] have that effect.'' *McConnell,* 124 S.Ct. at 696. The Court considered such advertisements to be ''the functional equivalent of express advocacy.'' *Id.*

The Commission seeks comment on whether the Supreme Court's treatment of Federal election activity or electioneering communications in *McConnell* requires or permits the Commission to change its regulations defining ''expenditure'' and ''contribution'' in 11 CFR part 100, subparts B, C, D and E to include those concepts. In the alternative, the Commission seeks comment on whether *McConnell* recognizes additional activities that may be constitutionally regulated by Congress, but in the absence of new legislation doing so, the Commission is prohibited from expanding the regulatory definitions of ''expenditure'' and ''contribution.''

The Commission further seeks comment on whether, even if it may so amend its regulations, the Commission should refrain from redefining such fundamental and statutorily defined terms, in the absence of further guidance from Congress. Is it consistent with BCRA to include all Federal election activity within the regulatory definition of ''expenditure'' when BCRA only added electioneering communications to the definition of ''contribution or expenditure'' in 2 U.S.C. 441b(b)(2)? Does BCRA's specification in 2 U.S.C. 441a(a)(7)(C) that coordinated ''disbursements'' for electioneering communications can be contributions provide any guidance regarding whether payments for electioneering communications should be considered expenditures? Is it consistent with Congressional intent for the Commission to categorize voter registration, voter identification, get-out-the-vote and generic campaign activities by a State or local candidate committee as ''for the purpose of influencing any election to Federal office?''

Does the definition of ''independent expenditure'' in 2 U.S.C. 431(17)(A), which requires express advocacy, limit Commission's ability to define an ''expenditure'' to communications that include express advocacy? If not, can communications be considered ''expenditures'' if they fail to meet both the definition of ''independent expenditure'' in 2 U.S.C. 431(17) and the definition of ''coordinated communication'' under 11 CFR 109.21? Is the function of the definition of ''independent expenditure'' in 2 U.S.C. 431(17)(A) limited to the 24-hour and 48-hour reporting requirements in 2 U.S.C. 434(g)?

B. Proposed Regulations

In this NPRM, the Commission considers whether, in light of *McConnell,* it should revise current regulations to reflect that certain communications and certain voter drive activities have the purpose of influencing Federal elections. This proposal includes several alternatives. The Commission has not made any final decisions on any of the proposed rules or alternatives, which are described below, and seeks comment on all of them.

1. Proposed 11 CFR 100.5—Definition of ''political committee''

Current 11 CFR 100.5(a) specifies that any committee, club, association, or other group of persons that receives contributions aggregating in excess of $1,000 or which makes expenditures aggregating in excess of $1,000 during a calendar year is a political committee. In addition to considering amending this regulation to include *Buckley's* major purpose test, the proposal for which is discussed separately below, the Commission is considering amending this definition so that the first three types of Federal election activity and electioneering communications would be counted toward the $1,000 expenditure thresholds.

Alternative 1–A would define those ''expenditures'' that count toward the $1,000 threshold, but this definition would not apply in any other context in which the term ''expenditure'' is used in FECA or in the Commission's regulations.

The Commission is considering a number of issues related to Alternative 1–A. Should persons other than political party committees be subject to a rule that treats the first three types of Federal election activities as ''expenditures'' for purposes of the $1,000 threshold in the definition of ''political committee?'' Should all of Federal election activity and all electioneering communications count toward political committee status, or should the Commission make distinctions to count only certain types of Federal election activity or only certain electioneering communications toward political committee status? For

example, should Federal election activity that does not refer to a clearly identified Federal candidate count toward political committee status? Would a definition of ''expenditure'' that includes voter drive activities by State or local candidate committees on behalf of their own candidacies be overly broad?

Should funds received for Federal election activities types 1 through 3 or electioneering communications count as contributions for purposes of the $1,000 threshold? If any disbursements for these activities should count as expenditures, should the corresponding funds received to make those disbursements count as contributions? Should the Commission treat funds raised by a State or local candidate committee through solicitations advocating their own election, as well as incidentally expressly advocating the election or defeat of a clearly identified Federal candidate, or promoting, supporting, attacking or opposing a clearly identified Federal candidate, as funds contributed ''for the purpose of influencing any election for Federal office?'' Please note that none of the regulatory text set forth below relates to this proposal regarding ''contributions'' as used in proposed 11 CFR 100.5(a)(1)(i).

Finally, should the Commission confine any reexamination of the definition of ''expenditure'' to apply only as that term is used as part of the definition of ''political committee?'' FECA already provides two definitions of ''expenditure,'' one in 2 U.S.C. 431(9) and a broader definition in 2 U.S.C. 441b. Currently, ''expenditure'' in 11 CFR 100.5(a) uses the definition in 2 U.S.C. 431(9) and 11 CFR part 100, subpart D. Should the Commission create by regulation a third definition of ''expenditure'' for determining political committee status?

2. 11 CFR Part 100, Subpart D—Definition of ''expenditure''

The Commission is also considering amendments to its general definition of ''expenditure'' to reflect *McConnell's* conclusion that certain communications and certain voter drives have the purpose or effect of influencing Federal elections.

One approach would be to add payments for the Federal election activities described in 2 U.S.C. 431(20)(A)(i) through (iii) and payments for electioneering communications to the definition of ''expenditure'' in 11 CFR part 100, subpart D. In evaluating this approach to amending its rules, the Commission will consider the same issues raised above concerning BCRA's application of the concepts of Federal election activities and electioneering communications in connection with Alternative 1–A.

BCRA imposes prohibitions and restrictions related to Federal election activities on national party committees (2 U.S.C. 441i(c)), State, district, and local political party committees (2 U.S.C. 441i(b)), Federal candidates (2 U.S.C. 441i(e)(1)(A), (e)(4)(A), and (e)(4)(B)), and State candidates (2 U.S.C. 441i(f)). Consequently, most of the Supreme Court's consideration of Federal election activities arose with respect to political party committees. In this context, the ''close relationship'' of Federal officeholders and candidates to their political parties was part of the justification of the Government's interest in regulating Federal election activities. *See McConnell,* 124 S.Ct. at 668 and n.51. In fact, in disposing of an equal protection claim that BCRA discriminates against political party committees in favor of ''interest groups,'' the Supreme Court acknowledged: ''Interest groups, however, remain free to raise soft money to fund voter registration, GOTV activities, mailings, and broadcast advertising (other than electioneering communications).'' *Id.,* 124 S.Ct. at 686.

The approach of including all funds disbursed for Federal election activities in the definition of ''expenditure,'' if adopted, would extend restrictions related to Federal election activities beyond political party committees and Federal candidates to all persons, including a State or local candidate committee.[6] Would such a regulation be consistent with FECA, as amended by BCRA? Would it be consistent with Congressional intent?

Similarly, BCRA amended the definition of ''contribution or expenditure'' in the corporate and labor organization prohibitions to include payments ''for any applicable electioneering communication.'' 2 U.S.C. 441b(b)(2). BCRA did not amend, however, the definition of ''expenditure'' with a broader application in 2 U.S.C. 431(9). Would the approach of including all payments for electioneering communications in the regulations implementing the 2 U.S.C. 431(9) definition of ''expenditure'' be consistent with FECA, as amended by BCRA? Would it be consistent with Congressional intent?

The proposed rules that follow as Alternative 1–B present a narrower approach. Although the Supreme Court's discussion of Federal election activities in *McConnell* was framed in the political party and candidate context, it recognized that these same activities by tax-exempt organizations do affect Federal elections. *McConnell,* 124 S.Ct. at 678 n.68. Given the Supreme Court's conclusions that types 1 through 3 of Federal election activities have a demonstrable effect on Federal elections, can the Commission conclude that the same communications and the same activities by actors other than political party committees and candidates are not expenditures, *i.e.*, payments for the purpose of influencing a Federal election? In an effort to take the Supreme Court's conclusions into consideration, Alternative 1–B would incorporate the concepts of Federal election activities types 1 through 3, but would also recognize that applying these concepts to actors other than political party committees and candidates requires some tailoring of Federal election activities.

A proposal to regulate Federal election activities by persons other than political party committees and candidates requires a reexamination of those activities in order to determine whether those activities carried out by such persons are the functional equivalent of the same activities when carried out by political party committees and candidates. Inherent in any activities conducted by political party committees or candidates is a partisan purpose, as the Supreme Court has recognized in other contexts. *See FEC* v. *Colorado Republican Federal Campaign Committee,* 533 U.S. 431, 450 (2001) (noting ''the seemingly unexceptionable premise that parties are organized for the purpose of electing candidates'' and agreeing that ''political parties are dominant players, second only to the candidates themselves, in federal elections''). When the proposed rules in Alternative 1–B consider Federal election activities conducted by other persons, they attempt to be consistent with *McConnell* by limiting the activities included in the ''expenditure'' definition to those with a partisan purpose.

Are the proposed rules consistent with *McConnell*? Do they limit the activities included in the ''expenditure'' definition to those activities that have a partisan purpose? Is Alternative 1–B's treatment of a State or local candidate committee's partisan activities consistent with BCRA? Is Alternative 1–B consistent with 2 U.S.C. 441i(e)(4), which permits Federal candidates to solicit up to $20,000 per individual for certain Federal election activities or for an entity whose principal purpose is to

[6] State and local candidate committees are subject to limitations with respect to their type 3 Federal election activities. 2 U.S.C. 441i(f).

conduct certain Federal election activities?

a. Proposed 11 CFR 100.115—Federal election activity: Partisan voter drives. Because the Supreme Court recognized that voter registration activity that takes place within 120 days before a Federal election, voter identification, and get-out-the-vote activities ''confer substantial benefits on federal candidates'' and because voter drives may be for the purpose of influencing Federal elections even when performed by tax-exempt organizations, Alternative 1–B would incorporate these aspects of Federal election activities in the definition of ''expenditure.'' *See McConnell,* 124 S.Ct. at 675, 678 n.68, and the discussion above in part II, A., 1. Proposed section 100.34 would define ''partisan voter drives,'' and proposed section 100.115 would include payments for voter registration, voter identification, and GOTV activities into the regulatory definition of ''expenditure,'' subject to the exceptions described below.

As reflected in FECA, the proposed rules in Alternative 1–B would distinguish partisan from nonpartisan Federal election activities. FECA exempts ''nonpartisan activity designed to encourage individuals to vote or register to vote'' from the definition of ''expenditure.'' 2 U.S.C. 431(9)(B)(ii). In order for voter drives to be ''nonpartisan,'' Commission regulations currently require that no effort is or has been made to determine the party or candidate preference of individuals before encouraging them to vote. 11 CFR 100.133.

Alternative 1–B includes proposed changes to section 100.133. First, the proposal would expressly state that if voter registration or get-out-the-vote activities included a communication that promotes, supports, attacks, or opposes a Federal or non-Federal candidate or if it promotes or opposes a political party, then the voter registration or get-out-the-vote activities is partisan. *See* proposed 11 CFR 100.133(a). Second, the proposal would add a provision that if information concerning likely party or candidate preference has been used to determine which voters to encourage to register to vote or to vote, the voter registration and get-out-the-vote activities would be partisan. *See* proposed 11 CFR 100.133(b).

These proposed changes would achieve more harmony between the Commission's approach to this issue and the Internal Revenue Service's (''the IRS's'') approach. The IRS regulations provide that ''to be nonpartisan, voter registration and 'get-out-the-vote' campaigns must not be specifically identified by the organization with any candidate or political party.'' 26 CFR 1.527–6(b)(5). In a private letter ruling, the IRS determined that a voter drive was partisan, even though the activities ''may not be specifically identified with a candidate or party in every case.'' It did so due to ''the intentional and deliberate targeting of individual voters or groups of voters on the basis of their expected preference for pro-issue candidates, as well as the timing of the dissemination and format of the materials used.'' Priv. Ltr. Rul. 99–25–051 (Mar. 29, 1999). Should the Commission otherwise clarify this rule or consider any other criteria?

Should voter identification be considered part of get-out-the-vote activities subject to section 100.133? If so, what changes to the proposed rules, if any, are necessary?

The proposed new rules for voter registration and get-out-the-vote activities at 11 CFR 100.34(a) and (c) would retain by reference the nonpartisan exception to the definition of ''expenditure'' in proposed 11 CFR 100.133. Similarly, proposed 11 CFR 100.34(b) would exclude disbursements for voter identification when no effort has been or will be made to determine or record the party or candidate preference of individuals on the voter list from the definition of ''partisan voter drive'' and therefore ''expenditure.'' *See* proposed 11 CFR 100.34(b) and 100.115.

The proposed rule at new 11 CFR 100.115 would also exclude Levin funds from the definition of ''expenditure.'' Levin funds are funds raised by State, district, or local political party committees and party organizations pursuant to 11 CFR 300.31 and disbursed by the same committee or organization pursuant to 11 CFR 300.32. BCRA specifically permits State, district, and local political party committees to raise and spend Levin funds for an allocable portion of voter registration, voter identification, and get-out-the-vote activities, rather than requiring these committees to use entirely Federal funds for these Federal election activities. 2 U.S.C. 441i(b)(2). This exception in BCRA would be preserved for State, district, and local political party committees and organizations by the exclusion of Levin funds from the proposed rules.

State and local political party committees may also conduct voter drives under the ''coattails'' exception to the definition of ''expenditure.'' 2 U.S.C. 431(9)(B)(ix); 11 CFR 100.149. Under certain conditions, voter registration and GOTV activities conducted by these party committees on behalf of the Presidential nominees are not treated as expenditures. In order to leave this exemption unaffected by the inclusion of the types 1 and 2 of Federal election activity in the definition of ''expenditure,'' the proposed rules would also amend 11 CFR 100.149 to provide expressly that the ''coattails'' exemption would apply notwithstanding proposed 11 CFR 100.115.

A proposal for the allocation of these expenditures is discussed below. Proposed section 100.155 would state that any non-Federal funds permissibly disbursed by a separate segregated fund or a nonconnected committee for partisan voter drives pursuant to the allocation rule in proposed 11 CFR 106.6 would not be ''expenditures.'' Consequently, the non-Federal funds would not count toward the $1,000 of expenditures required for political committee status under current 11 CFR 100.5(a) (or proposed 11 CFR 100.5(a)(1)(i)). The Commission seeks comment on whether this is an appropriate conclusion.

Additionally, the Commission seeks comment on the following questions. Are proposed sections 100.34 and 100.115 sufficiently tailored to reflect the application of Federal election activities to persons other than political party committees and candidates? The proposed regulations would treat many of the voter activities conducted by State and local candidate committees on behalf of their own candidacies as ''expenditures.'' Is there any evidence that Congress intended for the Commission to categorize such activities as ''for the purpose of influencing any election for Federal office?'' Should the Commission give any consideration in this context to the statutory exemptions from the definition of Federal election activity set forth in 2 U.S.C. 431(20)(B)? Should the proposed rules include an exception for the receipt of funds solicited by Federal candidates under 2 U.S.C. 441i(e)(4)(B)(ii), which under certain circumstances permits Federal candidates to solicit funds from individuals of up to $20,000—an amount that exceeds the contribution limit applicable to certain political committees in 2 U.S.C. 441a? Or, should the exception in 2 U.S.C. 441i(e)(4)(B)(ii) be limited to entities that are not political committees or that confine their voter registration, voter identification, and get-out-the-vote activities to nonpartisan activities? If the exception were confined to nonpartisan activities, what evidence, if any, is there that Congress intended for the exception

in 2 U.S.C. 441i(e)(4)(B)(ii) to be interpreted in such a way?

The definition of ''partisan voter drive'' in proposed section 100.34 would not include some voter registration and get-out-the-vote activities that would simultaneously fail to qualify for the exemption of ''nonpartisan voter registration and get-out-the-vote activities'' in section 100.133, in either its current form or as proposed to be amended. For example, some voter registration activity could take place more than 120 days before an election, which would mean that payments for it would not be expenditures. *See* proposed 11 CFR 100.34(a) (citing current 11 CFR 100.24(b)(1)) and 100.115. That same activity could also fail to qualify as nonpartisan under proposed 11 CFR 100.133 if it is subject to any of that section's exclusions, which include, for example, directing voter drives to supporters of a political party. Any voter registration or get-out-the-vote activities that fall in this ''gap'' would not be expenditures under proposed section 100.115, even though they would not qualify as ''nonpartisan'' under the exception in proposed section 100.133. This gap may be appropriate in that it reflects that such activity cannot be considered nonpartisan for purpose of the exemption, but it may not rise to the level of an ''expenditure'' under proposed sections 100.34 and 100.115 for the same reason that similar activity by a political party committee would be excluded from the definition of ''Federal election activity.'' 11 CFR 100.24(b)(1).

Alternatively, this gap could be eliminated by either adding an additional exemption from the definition of ''expenditure'' in 11 CFR part 100, subpart E, or dropping the time limitations of current 11 CFR 100.24(a)(1), (a)(3)(i), and (b)(1) from proposed section 100.34. Under the latter approach, the time limitations in current section 100.24 would be maintained with respect to the political party committees whose Federal election activities are subject to BCRA's time limits. 2 U.S.C. 431(20)(A)(i). The Commission seeks comment on these issues.

b. Proposed 11 CFR 100.116—Certain public communications. Alternative 1–B would also incorporate into the definition of ''expenditure'' payments for public communications that refer to a political party or a clearly identified Federal candidate and promote or support, or attack or oppose any political party or any Federal candidate. *See* proposed 11 CFR 100.116. This proposed rule is based on two types of Federal election activities: generic campaign activities, which are public communications that promote or oppose a political party, and public communications that promote, support, attack, or oppose a clearly identified candidate. *See* 2 U.S.C. 431(20)(A)(ii) and (iii); 11 CFR 100.24(a)(1); (b)(2)(ii); (b)(3); 100.25; and 100.26. Proposed section 100.155 would state that any non-Federal funds permissibly disbursed by a separate segregated fund or a nonconnected committee for public communications pursuant to the allocation rule in proposed 11 CFR 106.6 would not be ''expenditures.'' The Commission seeks comment on whether this is an appropriate conclusion.

The Supreme Court found that public communications that promote, support, attack or oppose a clearly identified Federal candidate ''have a dramatic effect on federal elections.'' *McConnell,* 124 S.Ct. at 675. The Supreme Court also found that generic campaign activity ''confer[s] substantial benefits on federal candidates.'' *Id.* If the Commission were to apply the voter drive activities of types 1 and 2 of Federal election activities outside of the political party committee context, these concepts may require modification to incorporate a partisan element. In contrast, generic campaign activity and type 3 of Federal election activities, by definition, include material that either promotes, supports, attacks or opposes a clearly identified Federal candidate or promotes or opposes a political party. This partisan content obviates the need to tailor these concepts for application outside the political party and candidate context.

Consistent with this approach, the Commission recently issued Advisory Opinion 2003–37 in which it stated that ''communications that promote, support, attack or oppose a clearly identified Federal candidate have no less a 'dramatic effect' on Federal elections when aired by other types of political committees, rather than party committees or candidate committees.'' AO 2003–37, at 3. In that advisory opinion, the Commission concluded that public communications that promote, support, attack or oppose a clearly identified Federal candidate when made by political committees are expenditures. Proposed section 100.116 would incorporate this conclusion in the Commission's regulations. It would also treat public communications that promote or oppose political parties in a similar fashion, and it would apply to communications made by all persons, not just political committees. If new rules apply the ''promote, support, attack or oppose'' standard to actors other than political party committees and candidates, should a temporal element be included in any such rule? Might an advertisement by a person other than a political party committee or candidate be properly understood as, for example, promoting a Federal candidate if publicly distributed close to an election, but the same advertisement by the same person publicly distributed far from an election might not promote the candidate? Should any of FECA's temporal limitations, which are discussed in connection with expenditures generally below, be adapted for this purpose?

Would the ''promote, support, attack or oppose'' standard be appropriate for those 527 organizations (tax exempt ''political organizations,'' discussed more *infra*) that by their very nature have influencing elections as a primary purpose? Would the ''promote, support, attack or oppose'' standard be appropriate for all 527 organizations? Should the Commission adopt a different standard for 501(c) organizations (other tax exempt organizations, discussed more *infra*) that would require not only ''promote, support, attack or oppose'' content, but also some basis for concluding the message is to influence a Federal election? Such additional bases could include: (1) Reference to the clearly identified candidate *as a candidate*; (2) reference to the election or to the voting process; (3) reference to the clearly identified candidate's opponent; or (4) reference to the character or fitness for office of the clearly identified candidate. Alternatively, should the Commission adopt the ''promote, support, attack or oppose'' standard for 501(c) organizations, but build in an exception for a message that is confined to expressly advocating seeking action by the clearly identified candidate on an upcoming legislative or executive decision without reference to any candidacy, election, voting, opponent, character, or fitness for office? In essence, the Commission seeks comment on whether it should define what is an expenditure in a way that follows the functional distinctions in the Internal Revenue Code and recognizes that some organizations engage in ''grassroots lobbying'' campaigns primarily designed to affect upcoming legislative or executive actions. If so, what regulatory language would be appropriate?

In different contexts, FECA now provides at least three content standards for communications—express advocacy; promote, support, attack or oppose; and reference to a clearly identified Federal candidate. *See, e.g.*, 2 U.S.C. 431(17)(A); (20)(A)(iii); 434(f)(3)(A)(i)(I) and

441d(a). What other content standards that are not vague or overbroad, if any, should be included in the definition of ''expenditure?''

c. Electioneering communications. Alternative 1–B does not include payments for electioneering communications in the definition of ''expenditures.'' Many electioneering communications either already are included in the definition of ''expenditure'' or would be included under the proposal. Under the current rules, political committees must report communications that satisfy the general definition of ''electioneering communications'' in 2 U.S.C. 434(f)(3)(A) as expenditures. 11 CFR 104.20(b). In addition, if an electioneering communication promotes, supports, attacks, or opposes a Federal candidate, it would also be a public communication that promotes, supports, attacks, or opposes a Federal candidate, which would make it an expenditure under proposed section 100.116. Consequently, the only electioneering communications that would not be treated as expenditures under Alternative 1–B would be those made by persons other than political committees that do not promote, support, attack, or oppose a clearly identified Federal candidate. Should the final rules include all electioneering communications in the definition of ''expenditure?''

d. Other potential approaches. The Commission also seeks comments on other potential approaches to amending the definition of ''expenditure'' in 11 CFR part 100, subpart D. Should a payment's status as an ''expenditure'' depend on the identity of the maker? For example, should payments for public communications that promote, support, attack or oppose a Federal candidate be expenditures only if made by a Federal political committee?

Are there other identifying characteristics that should be considered in determining whether a payment is an expenditure? For example, should payments by a tax-exempt, charitable organization operating under 26 U.S.C. 501(c)(3) be exempt from the definition of ''expenditure?'' In this regard, how should the Commission interpret the Internal Revenue Service's Technical Advice Memorandum 89–36–002 (Sept. 8, 1989), which permitted a 501(c)(3) organization to make advertisements that ''support or oppose a candidate in an election campaign,'' without losing its 501(c)(3) status for intervening in a political campaign?

Should the Commission consider an organization's status under section 501(c) or 527 of the Internal Revenue Code in determining whether a payment is an expenditure? Should some activities be expenditures if made by a section 527 organization, regardless of whether it is a Federal political committee? Should the same rules or different rules apply to organizations operating under section 501(c)(3), (4), or (6)?

Should the timing of a payment affect whether it is an ''expenditure?'' FECA and BCRA provide several temporal limitations on various provisions that recognize the significance of proximity to an election. FECA provides that certain independent expenditures must be reported within 24 hours if made during the twenty days before an election. 2 U.S.C. 434(g)(1) (formerly 2 U.S.C. 434(c)(2)(C)). BCRA limits electioneering communications to the thirty days before a primary election and the sixty days before a general election. 2 U.S.C. 434(f)(3)(A)(i)(II). BCRA also includes voter registration activity in Federal election activity only in the 120 days before a regularly scheduled Federal election. 2 U.S.C. 431(20)(A)(i). Do any of these time periods provide an appropriate temporal standard for any expenditures?

Should the rules address expenditures that might be in connection with more than one Federal election? The Commission recently concluded in an advisory opinion that an advertisement that was coordinated by a Congressional candidate with a presidential campaign committee could be a contribution to the presidential campaign committee in connection with the upcoming Presidential primary election in that State and an expenditure of the Congressional candidate in connection with her special election. AO 2004–1. Should this conclusion be incorporated into regulations or should it be reconsidered?

The Commission also seeks comment on whether any aspect of Alternative 1–B should be revised in order to harmonize the definition of ''expenditure'' in the Commission's regulations with the approach taken by the IRS. Section 527(e)(2) of the Internal Revenue Code of 1986, as amended, defines the term ''exempt function'' as ''the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed.'' 26 U.S.C. 527(e)(2). IRS regulations implementing this statutory definition provide that ''the term 'exempt function' includes all activities that are directly related to and support the process of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to public office or office in a political organization.'' 26 CFR 1.527–2(c)(1). IRS regulations also specify that whether an expenditure is for an exempt function depends on all the facts and circumstances. *Id.*

A Revenue Ruling issued by the IRS on December 23, 2003, stated that ''[w]hen an advocacy communication explicitly advocates the election or defeat of an individual to public office, the expenditure clearly is for an exempt function under § 527(e)(2).'' Rev. Rul. 04–6, at 4. The Revenue Ruling also identified a non-exhaustive list of factors that ''tend to show'' whether an advocacy communication on a public policy issue is for an exempt function or not, in the absence of ''explicit advocacy.'' The six identified factors that tend to show a communication is for an exempt function are: (a) The communication identifies a candidate for public office; (b) the timing of the communication coincides with an electoral campaign; (c) the communication targets voters in a particular election; (d) the communication identifies that candidate's position on the public policy issue that is the subject of the communication; (e) the position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications; and (f) the communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue. The five factors that tend to show a communication is not for an exempt function are: (a) The absence of one or more of the factors listed in (a) through (f) above; (b) the communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence; (c) the timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence; (d) the communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event; and (e) the communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication.

To what extent should Alternative 1–B be modified for harmony with the IRS's approach?

3. 11 CFR Part 100, Subpart B—Definition of ''contribution''

The Commission is also considering amending the definition of ''contribution'' in 11 CFR part 100, subpart B to make changes that would correspond to those proposed for the definition of ''expenditure'' in Alternative 1–B. Additionally, the Commission is considering amending its definition of ''contribution'' to include any funds that are received in response to a communication containing express advocacy of a clearly identified candidate.

a. Amendments corresponding to amendments to ''expenditure'' definition. Current 11 CFR 102.5(b) imposes requirements on organizations that do not qualify as ''political committees'' under current 11 CFR 100.5 and that make contributions or expenditures. The organization must demonstrate through a reasonable accounting method that, whenever it makes expenditures, it has received sufficient funds subject to the limitations and prohibitions of FECA to make the expenditures. Such organizations must also keep records of receipts and disbursements and, upon request, must make such records available to the Commission. *See* current 11 CFR 102.5(b)(1). Consequently, if the definition of ''expenditure'' is amended in any way, then any entity making such expenditures would be required to do so using only contributions that comply with the amount limitations and source prohibitions of FECA. If the Commission adopts the amended definition of ''expenditure,'' as proposed in Alternative 1–B, is an amendment to Commission regulations needed to state that funds used for any expenditures are contributions to that entity? Please note that proposed rule text for this approach is not included below, but if the Commission were to decide to adopt Alternative 1–B and this approach, then the text in the final rules amending the definition of ''contribution'' would be similar to the text in proposed sections 100.115 and 100.116 regarding ''expenditure.'' Should entities that are not political committees be required to report their contributions received and expenditures made in this context?

b. Proposed 11 CFR 100.57—Funds solicited with express advocacy. The Commission is considering whether solicitations containing express advocacy of federal candidates establish that any funds received in response are necessarily ''for the purpose of influencing any election for Federal office,'' so that they are contributions. Proposed section 100.57 would state that any funds provided in response to a solicitation that contained express advocacy for or against a clearly identified Federal candidate are contributions. If a solicitation states that the solicitor intends to take actions to elect or defeat a particular candidate, is it then logical to treat funds that are provided in response as funds that are ''for the purpose of influencing a Federal election?'' Should the standard be that the solicitation must not just include express advocacy but state that the funds will be used for express advocacy? Should funds raised by a State or local candidate for his or her own candidacy be treated as contributions ''for the purpose of influencing a Federal election'' if the State or local candidate's solicitation includes express advocacy for or against a clearly identified Federal candidate? Should proposed section 100.57 also include solicitations that expressly advocate the election or defeat of Federal candidates of a particular party without clearly identifying the particular candidates? Should the new rule use a standard other than express advocacy, such as a solicitation that promotes, supports, attacks, or opposes a Federal candidate, or indicates that funds received in response thereto will be used to promote, support, attack, or oppose a clearly identified Federal candidate? Should the new rule specify which contributions result from which solicitations? Should the new rule incorporate the standards in current 11 CFR 102.5(a)(2)(i) through (iii) to clarify further the types of funds received that must be treated as contributions? A conforming amendment to current 11 CFR 102.5(a)(2)(ii) would be necessary if any rule based on proposed section 100.57 is adopted.

4. Proposed 11 CFR 114.4—Corporate and Labor Organization Communications

Current 11 CFR 114.4(c)(2) and (d) permit corporations and labor organizations to conduct voter registration and get-out-the-vote activities beyond their restricted class provided that any communication does not expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party and subject to other restrictions. The Commission seeks comment on proposed rules that would amend paragraphs (c)(2) and (d) and add new paragraph (c)(3) to specify that such voter registration and get-out-the-vote activities would be subject to the conditions set forth in proposed 11 CFR 100.133, as discussed above. The purpose of such a revision would be to ensure that corporations and labor organizations would be subject to the same conditions as political committees, as well as other conditions specific to corporations and labor organizations, when spending non-Federal funds on these voter registration and get-out-the-vote activities. The Commission seeks comment on whether the same rules should apply not only to corporations and labor organizations, but also to any person or entity who uses corporate or labor organization general treasury funds for these purposes.

The Commission also seeks comment on whether current 11 CFR 100.133 should be amended to make clear that, when a corporation or labor organization conducts voter registration or get-out-the-vote activities, it would be subject to the requirements of 11 CFR 100.133 and 114.4(c) and (d). Additionally, the Commission seeks comment on whether the ''express advocacy'' standard set forth in 11 CFR 114.4(c)(2) and (d)(1) should be changed to the ''promote, support, attack or oppose'' standard. Would the latter standard be an appropriate standard for determining whether a communication has the ''purpose of influencing a Federal election?'' Would such an approach be consistent with *MCFL*?

Corporations and labor organizations may also conduct certain voter registration and GOTV activities aimed at their restricted classes. 11 CFR 114.3(c)(4). Because these activities are permitted by 11 CFR part 114, they are exempt from the definition of ''expenditure.'' 2 U.S.C. 431(9)(B)(v); 11 CFR 100.141. No changes to section 114.3(c)(4) are proposed because the Commission intends to retain this exception to the definition of ''expenditure.''

III. Major Purpose

A. Major Purpose Requirement

The Commission seeks comment as to whether the existing definition of ''political committee'' in 11 CFR 100.5(a) should be amended by incorporating the major purpose requirement, and if so, how that should be accomplished. Under the proposed section 100.5(a)(1), a committee, club, association or group of persons that receives in excess of $1,000 in total contributions or makes in excess of $1,000 in total expenditures would be a political committee only if ''the nomination or election of one or more

Federal candidates is *a* major purpose'' of the committee, club, association or group of persons (emphasis added).

1. Major Purpose or Primary Purpose?

The proposed rule would include the indefinite article ''a'' to modify ''major purpose,'' rather than the definite article ''the.'' The consequence would be that the major purpose element of the definition of ''political committee'' may be satisfied if the nomination or election of a candidate or candidates is one of two or more major purposes of an organization, even if it is not its primary purpose. The Commission seeks comment regarding whether, to satisfy the major purpose requirement, the nomination or election of candidates must be the predominant purpose of the organization, or whether the major purpose standard is satisfied when the nomination or election of candidates is a major purpose of the organization, even when the organization spends more funds for another purpose.

In first articulating the major purpose requirement in *Buckley,* the Supreme Court determined that the definition of political committee ''need only encompass organizations that are under the control of a candidate or *the major purpose* of which is the nomination or election of a candidate.'' *Buckley,* 424 U.S. at 79 (emphasis added). Likewise, in *MCFL,* the Supreme Court observed that:

> should MCFL's independent spending become so extensive that *the organization's major purpose* may be regarded as campaign activity, the corporation would be classified as a political committee. As such it would automatically be subject to the obligations and restrictions applicable to those groups whose *primary objective* is to influence political campaigns.

MCFL, 479 U.S. at 262 (emphasis added and citations omitted). These passages indicate that the nomination or election of candidates must be *the* major purpose or, put another way, the *primary objective* of the organization. In light of the Supreme Court's repeated use of the term ''the major purpose,'' can the Commission substitute the term ''a major purpose,'' which appears to have a different meaning?

Could the major purpose standard in *Buckley* nevertheless be interpreted to require that the nomination or election of candidates be ''a'' major purpose of the organization, even when the organization has other, perhaps more significant, purposes? The Commission notes that the ''major purpose'' requirement appears only in judicial opinions not in any statute, and that the Supreme Court has warned against ''dissect[ing] the sentences of the United States Reports as though they were the United States Code.'' *St. Mary's Honor Ctr.* v. *Hicks,* 509 U.S. 502, 515 (1993). *In Aka* v. *Washington Hosp. Ctr.,* 156 F.3d 1284 (D.C. Cir. 1998), the Circuit Court explained that ''the [Supreme] Court's every word and sentence cannot be read in a vacuum; its pronouncements must be read in light of the holding of the case and to the degree possible, so as to be consistent with the Court's apparent intentions.'' *Id.* at 1291.

As explained above, in *Buckley,* the Court imposed the ''major purpose'' requirement because it was concerned that the statutory definition of political committee ''could be interpreted to reach groups engaged purely in issue discussion.'' *Buckley,* 424 U.S. at 79. Consequently, the ''apparent intention'' of the Court appears to have been to limit the applicability of the definition of political committee so that it would not cover organizations involved ''purely in issue discussion'' but that nevertheless engage in some incidental activity that might otherwise satisfy the Act's $1,000 expenditure or contribution political committee thresholds. Would it be consistent with the Court's apparent intention for the Commission to amend its definition of ''political committee'' to only require that the nomination or election of candidates be a major purpose rather than the primary purpose of the organization? It seems that an organization that has the nomination or election of candidates as a major purpose is not ''engaged purely in issue discussion.'' Moreover, such a definition of political committee appears unlikely to cover organizations that engage in some incidental activity that causes them to exceed the $1,000 expenditure or contribution thresholds.

In *United States* v. *Harriss,* 347 U.S. 612, 621–22 (1954), the Supreme Court interpreted the meaning of the term ''principal purpose'' in the Federal Regulation of Lobbying Act. That statute provided that certain provisions applied only to those persons whose ''principal purpose'' is to aid in the passage or defeat of legislation. *Id.* at 619. The Court refused to interpret the statute to require that the influencing of legislation be the person's most important—or primary—purpose. Instead, the Court concluded that the phrase ''principal purpose'' was designed to exclude from the coverage of the act those persons ''having only an incidental purpose of influencing legislation.'' *Id.* at 622. According to the Supreme Court:

> [i]f it were otherwise,—if an organization, for example, were exempted because lobbying was only one of its main activities—the Act would in large measure be reduced to a mere exhortation against abuse of the legislative process. In construing the Act narrowly to avoid constitutional doubts, we must also avoid a construction that would seriously impair the effectiveness of the Act in coping with the problem it was designed to alleviate.

Id. at 622–23.

The Court's ruling in *Harriss* may be instructive because, in that case, the Court was interpreting the meaning of the word ''principal,'' which, when used as an adjective, is defined as ''most important.'' *See* Webster's II New Riverside Dictionary 556 (1st ed. 1984). The term ''major,'' on the other hand, is defined as ''greater in importance rank or stature'' or ''demanding great attention.'' Webster's II New Riverside Dictionary 421 (1st ed. 1984). Thus, ''major,'' unlike ''principal,'' does not signify ''most important'' or ''primary'' or ''first in rank.'' Given that the Supreme Court has interpreted the phrase ''principal purpose'' in a statute to include an organization for which lobbying is merely ''one of its main activities,'' would the Commission be justified in interpreting the phrase ''major purpose'' in *Buckley* to also mean ''one of its main activities?'' Is it significant that the Court in *Buckley* chose to use the phrase ''major purpose'' instead of ''primary purpose'' or ''principal purpose?''

2. Particular Federal Candidates

The proposed rule would require that the organization have as a major purpose the nomination or election of candidates for Federal office, as opposed to non-Federal office. The Commission seeks comment regarding whether the proposed rule should be limited to the nomination or election of Federal candidates or, instead, whether the nomination or election of all candidates, including candidates for non-Federal office will suffice. Likewise, the Commission asks whether the major purpose requirement mandates that the organization be involved in the nomination or election of one or more particular candidates or, instead, whether it is sufficient for the organization to have a major purpose of nominating or electing certain categories of candidates, such as Democrats or Republicans, or women, or candidates who take a position on a particular issue. In *FEC* v. *GOPAC, Inc.,* 917 F. Supp. 851 (D.D.C. 1996), the District Court interpreted *Buckley* and *MCFL* to require that the major purpose of the organization be ''the nomination or election of a *particular* candidate or

candidates for *federal* office.'' *GOPAC,* 917 F. Supp. at 859 (emphasis added). The Commission seeks comment as to whether this is a proper reading of *Buckley* and *MCFL.* Should the Commission issue regulations that conflict with the GOPAC decision?

3. Existing 11 CFR 100.5(b) through (e)

Please note that current 11 CFR 100.5(b) through (e), which identify certain organizations that are considered to be political committees (separate segregated funds, local party committees, principal campaign committees, and multi-candidate committees), do not incorporate the ''major purpose'' standard. This is because the Commission has determined that these organizations, by their nature or by definition, have as their major—if not primary—purpose, the nomination or election of candidates.

For example, current 11 CFR 100.5(b) provides that a separate segregated fund established under 2 U.S.C. 441b(b)(2)(C) is a political committee because, pursuant to 2 U.S.C. 441b(b)(2)(C), a separate segregated fund is ''to be utilized for political purposes.'' 2 U.S.C. 441b(b)(2)(C). Current 11 CFR 100.5(c) provides that, under certain circumstances, the local committee of a political party is a political committee because, like national parties, these organizations exist for the purpose of nominating and electing candidates. *See* 2 U.S.C. 431(4)(C). Moreover, such organizations are organized under section 527 of the Internal Revenue Code, which requires that these organizations be organized and operated primarily for the purpose of influencing or attempting to influence the nomination, election or appointment of individuals to public office. *See* 26 U.S.C. 527(e); *see also* discussion of 527 organizations below. Current 11 CFR 100.5(d) and (e)(1) provide that an individual's principal or authorized campaign committees are political committees because these organizations are established for the purpose of nominating or electing an individual to public office. *See* 2 U.S.C. 431(5) and (6). Moreover, such organizations are ''under the control of a candidate,'' and therefore are not subject to the major purpose requirement. *See Buckley,* 424 U.S. at 79. Finally, current 11 CFR 100.5(e)(3) provides that multi-candidate committees are political committees because these organizations make and receive contributions for Federal elections. Consequently, these organizations satisfy the major purpose test.

The Commission proposes no changes to existing 11 CFR 100.5(b) through (e). Nevertheless, the Commission seeks comments regarding whether any amendments to these paragraphs are necessary.

B. Major Purpose Tests

The Commission seeks comment on proposed 11 CFR 100.5(a)(2)(i) through (iv), which provides four tests for determining when an entity would satisfy the major purpose requirement. Please note that the Commission has not made any decisions on whether to adopt any of the proposals for the major test(s). If the Commission were to decide to adopt one or more of the proposed major purpose tests, an organization that meets any of the major purpose tests would be considered to have as a major purpose the nomination or election of Federal candidates. Consequently, if that organization exceeds the $1,000 contribution or expenditure threshold in 11 CFR 100.5(a)(1)(i), it would be a political committee and would have to comply with the registration, reporting and other requirements for political committees. Are the criteria appropriate? Would other criteria be more appropriate?

1. Proposed 11 CFR 100.5(a)(2)(i)—Avowed Purpose and Spending

The first of the four proposed major purpose tests, which is set forth in proposed section 100.5(a)(2)(i), would use the organization's public pronouncements and spending to determine if its major purpose is to nominate or elect candidates. An organization would satisfy the major purpose element in proposed section 100.5(a)(2)(i) if: (1) Its organizational documents, solicitations, advertising, other similar written materials, public pronouncements, or any other communications demonstrate that its major purpose is to nominate, elect, defeat, promote, attack, support, or oppose a clearly identified candidate or candidates for Federal office or the Federal candidates of a clearly identified political party; and (2) it disburses more than $10,000 in the current calendar year or any of the previous four calendar years on the following: (1) Expenditures (including independent expenditures); (2) contributions; (3) payments for types 1 through 3 of Federal election activity; and (4) payments for all or any part of an electioneering communication, as defined in 11 CFR 100.29.

The first prong of the major purpose test in proposed section 100.5(a)(2)(i) would rely on an organization's written characterization of its own activities. This would include the organization's organizational documents, such as its charter, constitution, by-laws, etc. The second prong would require that an organization's disbursements in connection with a Federal election exceed $10,000. This two-pronged approach would ensure that documents or communications that demonstrate that an organization's avowed purpose is to nominate, elect, defeat, promote, attack, support or oppose a candidate or candidates are substantiated by its actual disbursements in connection with a Federal election.

a. Public Pronouncements. For an organization's public pronouncements and other communications to demonstrate that the organization has a major purpose of nominating, electing, promoting, attacking, supporting, or opposing clearly identified Federal candidates or the Federal candidates of a clearly identified political party, the written materials and other communications must refer to Federal candidates of a clearly identified political party or to a ''clearly identified candidate,'' which is defined in 11 CFR 100.17. Thus, under proposed paragraph (a)(2)(i), an organization would not be considered to have the nomination or election of candidates as a major purpose where the organization's public communications merely indicate that its major purpose is to elect candidates holding particular positions (*e.g.,* pro-business candidates or pro-environmental candidates) without specifying which candidates hold those positions. Such an organization, however, could still be considered to have the nomination or election of candidates as a major purpose under the other three major purpose tests—proposed paragraphs (a)(2)(ii) through (iv), which are discussed below.

The Commission seeks comment regarding whether it is appropriate to base its major purpose analysis on the written public statements, documents, solicitations, and other communications by an organization. Are there circumstances where an organization's written public statements, documents, solicitations, and other communications would not be an appropriate measure of its major purpose? Should the final rule take into account the organization's oral, as well as written, communications to determine if it satisfies the first prong of the major purpose test in proposed section 100.5(a)(2)(i)?

The Commission also seeks comment regarding how this provision should operate with respect to disavowed major purposes or apparently contradictory statements of the organization's major purposes. For example, what would be

the outcome if the leader (*e.g.,* president, chairperson, etc.) of the organization disavows the organization's previously stated purpose? What if this disavowal is attempted by someone other than the organization's leader? Should the rules account for the possibility that an organization can disavow its previous statements regarding its major purpose? Should there be a time limit on the applicability of statements made in the organization's communications? For example, should statements from five years ago be given less weight than more current statements? Are these concerns alleviated by the second prong of the major purpose test set forth in proposed section 100.5(a)(2)(i), which would require that the organization exceed $10,000 in disbursements in connection with a Federal election?

Similarly, what if some of the organization's communications indicate that its major purpose is the nomination or election of candidates, but other communications indicate that it has one or more other major purposes? How should the major purpose of the organization be assessed in these situations? Should some communications or types of communications be afforded greater weight then others when assessing major purpose under this proposed paragraph? For example, should the Commission give greater weight to statements in the organization's solicitations or in its governing documents than it gives to potentially self-serving, ambiguous or contradictory statements by its leaders or its members? Should the Commission consider only the statements it makes in its solicitations or in its organizational documents and ignore statements found elsewhere? Would these concerns be alleviated by the second prong of the major purpose test set forth in proposed section 100.5(a)(2)(i), which would require that the organization exceed $10,000 in disbursements in connection with a Federal election?

b. $10,000 Disbursement Threshold. To satisfy the second prong of the major purpose test set forth in proposed section 100.5(a)(2)(i), the organization's disbursements in connection with any election for Federal office would have to exceed the $10,000 threshold in the current year or any of the previous four calendar years. For example, to assess whether this threshold has been met in 2004, the Commission would examine the organization's disbursements in 2000, 2001, 2002, 2003 and 2004. If it exceeded the $10,000 threshold in any of those years, it would satisfy the $10,000 disbursement requirement in proposed paragraph (a)(2)(i). Because this threshold is an absolute dollar amount rather than a percentage of total spending, the current year spending would be relevant to the analysis. Consequently, this provision, unlike proposed paragraph (a)(2)(ii), would apply to both existing and newly established organizations. The Commission seeks comment regarding the use of this time period in proposed paragraph (a)(2)(i). Should the threshold have to be met in all four preceding years? If the Commission does adopt such a four-year look-back provision, would it be fair to implement it prior to 2008?

The Commission also seeks comment regarding the proposed $10,000 threshold. The Commission notes that Congress established a $10,000 threshold to trigger the reporting requirements for electioneering communications under 2 U.S.C. 434(f) and 48-hour reporting of independent expenditures under 2 U.S.C. 434(g)(2). By establishing these $10,000 thresholds, Congress indicated that it believed $10,000 in activity to be significant enough to require reporting within 48 hours of the activity. Is it appropriate for the Commission to adopt a similar threshold to use in the major purpose test set forth in proposed paragraph (a)(2)(i), or is a higher or lower threshold more appropriate and why?

The Commission also seeks comment on the proposal to count the following types of disbursements toward the $10,000 threshold: (1) Expenditures (including independent expenditures); (2) contributions; (3) payments for types 1 to 3 of Federal election activity; and (4) payments for all or any part of an electioneering communication, as defined in 11 CFR 100.29. Payments for Federal election activity would be limited to only the first three of the four types of Federal election activity described in 11 CFR 100.24(b) because the fourth type of Federal election activity—services provided during any month by an employee of a State, district, or local committee of a political party who spends more than 25 percent of that individual's compensated time during that month on activities in connection with a Federal election—applies only to certain political party committees, which are presumed to satisfy the major purpose requirement.

The Commission seeks comment regarding the types of disbursements that would count toward the $10,000 threshold. Is it appropriate to count expenditures (including independent expenditures), contributions, Federal election activity (types 1 through 3), and electioneering communications toward the spending threshold? Are there other categories or types of disbursements that should be included, such as administrative costs, overhead, and costs associated with volunteer activities? Should certain exceptions be included and, if so, how should those exceptions be crafted? For example, since some Federal election activity by non-party organizations might be truly non-partisan, should the types of voter registration, voter identification, get-out-the-vote, and generic campaign activity captured in the major purpose analysis be confined to partisan activity? Since the major purpose test envisioned in the proposed rules uses ''a major purpose to influence Federal elections'' test, should the four types of disbursements be subject to an allocation regime similar to those in 11 CFR 106.1 and 106.6, where only the allocable Federal portion would count toward the $10,000 threshold?

As discussed above with regard to the proposed amendments to the definition of ''expenditure,'' certain Federal election activity influences Federal elections. Does this justify counting the three types of Federal election activity toward the $10,000 disbursement threshold? *McConnell* concluded that ''[w]hile the distinction between ''issue'' and express advocacy seemed neat in theory, the two categories of advertisements proved functionally identical in important respects.'' *McConnell,* 124 S.Ct. at 650. The Supreme Court went on to explain that both types of communications ''were used to advocate the election or defeat of clearly identified candidates, even though the so-called issue ads eschewed the use of magic words.'' *Id.* Nonetheless, since some electioneering communications (and even some ''promote, support, attack, or oppose'' messages) by certain non-party organizations, such as 501(c) organizations might, be confined to advocating action regarding a particular legislative or executive decision, is there a need to develop a more focused content analysis for the major purpose test? *McConnell* held that it is permissible to treat an organization as a political committee even when the organization makes only independent expenditures and does not make any contributions to Federal candidates. *Id.* at 665 n.48. Does this justify counting independent expenditures toward the spending threshold?

2. Proposed 11 CFR 100.5(a)(2)(ii)—50 Percent Disbursement Threshold

The second of the four proposed major purpose tests is set forth in

proposed paragraph (a)(2)(ii). This paragraph would consider an organization to have a major purpose of nominating or electing candidates if more than 50 percent of the organization's total annual disbursements during any of the previous four calendar years was spent on: (1) Expenditures (including independent expenditures); (2) contributions; (3) payments for types 1 through 3 of Federal election activity; and (4) payments for all or any part of an electioneering communication, as defined in 11 CFR 100.29.

The Commission notes that, unlike proposed paragraph (a)(2)(i), this major purpose test does not consider the organization's public pronouncements. An organization that exceeds the 50 percent threshold would be considered to have the election or nomination of candidates as a major purpose regardless of whether or not the organization's public pronouncements or other communications indicate that it has such a major purpose. The Commission seeks comments regarding whether this major purpose test should also include consideration of the organization's public pronouncements or other communications, as is the case in proposed paragraph (a)(2)(i).

As set forth above, the relevant years for proposed paragraph (a)(2)(ii) would be the previous four calendar years. For example, to apply proposed paragraph (a)(2)(ii) for an organization during the year 2004, the relevant years would be 2000, 2001, 2002, and 2003. If an organization's election-related spending exceeded the 50 percent threshold in any of these years, it would be considered to have the nomination or election of candidates as a major purpose. Alternatively, should the organization's election-related spending have to exceed the 50 percent threshold in each of the preceding four years to trigger political committee status? Because an organization's total annual disbursements are typically unknown until the end of the year, the current year spending would not be examined under this proposed major purpose test. That is why, in the example given above, the organization's spending during 2004 was not considered. For the same reason, this proposed provision would be inapplicable to newly established organizations that have no spending in any prior years. However, newly established organizations would still be subject to the other three proposed major purpose tests, including the $50,000 disbursement threshold in proposed paragraph (a)(2)(iii).

The Commission also seeks comment on the proposal to consider the organization's spending during the previous four calendar years, which would cover groups that are active only during presidential election years. Should the proposed rule look back more years or fewer years? If so, how many calendar years would it be appropriate to examine? What should be the effective date of a rule that looks back four years?

The types of spending that would be counted toward the 50 percent threshold in the major purpose test set forth in proposed paragraph (a)(2)(ii) would be the same as those that would be counted toward the $10,000 spending threshold in proposed paragraph (a)(2)(i). The Commission seeks comment regarding counting these categories of disbursements toward the 50 percent threshold. The Commission specifically refers commenters to the questions and issues raised above with respect to counting these categories of disbursements toward the $10,000 disbursement threshold in proposed paragraph (a)(2)(i).

The Commission also seeks comment on the use of the 50 percent threshold. Is another percentage more appropriate to assess an organization's major purpose? Should the Commission apply a 25 percent threshold? Could a very large organization that spends less than 50 percent of its funds on election-related disbursements nevertheless have a profound effect on Federal elections? Does this justify the Commission adopting a threshold lower than 50 percent or would this situation be addressed by absolute dollar thresholds that would be used in proposed paragraphs (a)(2)(i) and (a)(2)(iii).

Should the size of the percentage threshold depend upon the determination of whether the nomination or election of candidates must be *the* major purpose of the organization, or must be only *a* major purpose of the organization? If the proper interpretation of the major purpose requirement is that the nomination or election of candidates must be the organization's primary purpose, should this proposed 50 percent threshold be the only test for major purpose adopted by the Commission in the final rules? In other words, if the nomination or election of candidates must be the organization's most important purpose, perhaps only those organizations that spend most (*i.e.,* more than 50 percent) of their funds on the nomination or election of candidates satisfy the major purpose requirement.

On the other hand, how should the final rule address organizations that spend a plurality, but not a majority, of their money on nomination and election activities? For example, should an organization be considered to satisfy the major purpose requirement if it spends only 30 percent of its funds on election-related activities (*i.e.,* those items that would count toward the proposed 50 percent threshold) but does not spend more than 30 percent on any other activity? To apply such a rule, would the Commission have to adopt categories of non-election spending so that the 70 percent of funds that the organization spent on non-election purposes would not be combined into a single category of ''non-election activities,'' thereby allowing the organization to avoid political committee status? If such categories are required, how should they be crafted?

3. Proposed 11 CFR 100.5(a)(2)(iii)—$50,000 Disbursement Threshold

The third of the four proposed major purpose tests, which is set forth in proposed paragraph (a)(2)(iii), would consider an organization to have the nomination or election of Federal candidates as a major purpose if it spends more than $50,000 in the current calendar year or any of the previous four calendar years on the following: (1) Expenditures (including independent expenditures); (2) contributions; (3) payments for types 1 through 3 of Federal election activity; and (4) payments for all or any part of an electioneering communication, as defined in 11 CFR 100.29. When an organization exceeds the $50,000 spending threshold, it would satisfy the major purpose standard. For example, to conclude that an organization has a major purpose of nominating and electing candidates in 2004, under proposed paragraph (a)(2)(iii), the organization would have to exceed the $50,000 threshold in either 2000, 2001, 2002, 2003 or 2004. The relevant time period in proposed 11 CFR 100.5(a)(2)(iii) is the current calendar year or any of the four previous calendar years. Because this threshold is an absolute dollar amount instead of a percentage of total spending, the current year spending would be relevant to the analysis. Consequently, this provision, unlike proposed paragraph (a)(2)(ii) would apply to newly established organizations. The Commission seeks comment regarding the use of this time period in proposed paragraph (a)(2)(iii). Would it be more appropriate to require that the threshold be met in each of the four preceding calendar years?

The Commission seeks comment regarding the proposed $50,000 threshold. The Commission notes that it uses a $50,000 threshold to determine

when a political committee is subject to mandatory electronic filing of its financial disclosure statements. *See* 11 CFR 104.18(a). Is this an appropriate dollar threshold for triggering major purpose under this proposed test or is a higher or lower threshold more appropriate and why? Is a higher or lower threshold more appropriate in certain situations or with respect to particular types of organizations? Should the proposed rule incorporate a sliding-scale dollar threshold that would increase or decrease depending upon the size or type of organization, or the type of activity in which the organization engages? How might such a sliding scale specifically work? Is it preferable not to have any major purpose criteria based upon a strict dollar amount and, if so, how would the Commission assess the major purpose of a newly established organization?

Like proposed paragraphs (a)(2)(i) and (a)(2)(ii), proposed paragraph (a)(2)(iii) would count the following types of disbursements toward the spending threshold: (1) Expenditures (including independent expenditures); (2) contributions; (3) payments for types 1 through 3 of Federal election activity; and (4) payments for all or any part of an electioneering communication, as defined in 11 CFR 100.29. The Commission seeks comment regarding counting these categories of disbursements toward the $50,000 threshold. The Commission specifically refers commenters to the questions and issues raised above with respect to counting these categories of disbursements toward the $10,000 spending threshold in proposed paragraph (a)(2)(i).

4. Proposed 11 CFR 100.5(a)(2)(iv)—527 Organizations

Proposed 11 CFR 100.5(a)(2)(iv) offers two alternatives for the fourth of the four proposed major purpose tests. Both alternatives address ''527 organizations,'' which are entities organized under section 527 of the Internal Revenue Code, 26 U.S.C. 527. A 527 organization is ''a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.'' 26 U.S.C. 527(e)(1). An exempt function is defined as ''the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice Presidential electors.'' 26 U.S.C. 527(e)(2).

Alternative 2–A provides that all 527 organizations would be considered to have the nomination or election of candidates as a major purpose, but carves out five exceptions: (1) Any 527 organization that is the campaign organization of an individual seeking nomination, election, appointment or selection to a non-Federal office; (2) any 527 organization that is organized solely for the purpose of promoting the nomination or election of a particular individual to a non-Federal office; (3) any 527 organization that engages in nomination and election activities only with respect to elections in which there is no candidate for Federal office on the ballot; (4) any 527 organization that operates in only one State and which is required by the law of that State to file financial disclosure reports with a State agency; and (5) any 527 organization that is organized solely for the purpose of influencing the selection, appointment, or nomination of individuals to non-elective office, or the election, selection, nomination or appointment of persons to leadership positions within a political party.

The first proposed exception would recognize that the major purpose of a campaign organization for an individual seeking non-Federal office is the nomination or election of that individual to non-Federal office. Consequently, such an organization is not likely to have as a major purpose the nomination or election of candidates to Federal office. The second proposed exception would address those organizations that are organized solely to promote the nomination or election of individuals to non-Federal offices, but do not fall within the first exception because they are not under the control of that particular non-Federal candidate.

The third and fourth proposed exceptions pertain to State political organizations. The exception in proposed section 100.5(a)(2)(iv)(C) would address 527 organizations that operate only in connection with non-Federal elections and only in States, such as Virginia, that hold non-Federal elections in years where there is no regularly scheduled Federal election (*i.e.,* odd-numbered years). Such an organization, which does not engage in activity in connection with any election for Federal office, is not likely to have as a major purpose the nomination or election of Federal candidates. The exception in proposed section 100.5(a)(2)(iv)(D) would address organizations that operate in only one State and, under State law, must disclose their financial activity to a State agency. Such organizations, because they operate in only one State, would not be deemed to have a major purpose of nominating or electing Federal candidates solely because they are 527 organizations.

The fifth proposed exception would recognize that 527 organizations established solely to influence the selection, appointment or nomination of individuals to non-elective office (*e.g.,* judicial appointments), or the nomination or election of candidates for leadership positions within a political party, should be exempt from this proposed major purpose test because they appear unlikely to have a major purpose of nominating or electing candidates to Federal office.

Organizations that do not satisfy any of the five exceptions and that receive $1,000 in contributions or make $1,000 in expenditures would be Federal political committees under proposed section 100.5(a) if they are organized under section 527 of the Internal Revenue Code. Should the Commission consider additional exceptions to proposed section 100.5(a)(2)(iv) to exclude more organizations, or should the Commission conclude that other organizations should be treated as Federal political committees if they satisfy the $1,000 thresholds in proposed section 100.5(a)(1)?

The Commission notes that any 527 organization that falls within one or more of the exceptions contained in Alternative 2–A could nevertheless be considered to have a major purpose of nominating or electing Federal candidates under one of the first three major purpose tests, such as by exceeding the 50 percent threshold set forth in proposed paragraph (a)(2)(ii) or the $50,000 spending threshold set forth in proposed paragraph (a)(2)(iii). The Commission seeks comment on whether the exceptions contained in Alternative 2–A are appropriate and whether Alternative 2–A should include additional exceptions. Alternative 2–B, in contrast, would provide that all 527 organizations would be considered to have the nomination or election of candidates as a major purpose, and does not provide for any exceptions.

The Commission seeks comment regarding whether it is necessary and appropriate to mention 527 organizations in the proposed rule, or whether it would be better to eliminate the fourth major purpose test and instead subject 527 organizations, like any other organization, to analysis under the first three tests. To the extent that 527 organizations should be explicitly mentioned in the proposed rule, which alternative is more

appropriate, Alternative 2–A, Alternative 2–B, or some other alternative?

5. Other Tax-Exempt Organizations

The proposed rule does not expressly mention other tax-exempt organizations, such as those organized under section 501(c) of the Internal Revenue Code, because, unlike 527 organizations, these organizations could lose their tax-exempt status if their primary purpose were to influence elections. Should the final rule state that certain tax-exempt organizations, such as those organized under 501(c)(3) or (c)(4) of the Internal Revenue Code, will not meet any of the major purpose tests because of the nature of their tax-exempt status, and exempt them from the definition of political committee? Or should the final rule not provide an exemption for 501(c) organizations, recognizing that the various thresholds in the major purpose tests are set high enough that certain 501(c) organizations may continue to conduct incidental or low levels of election activities without satisfying any of the major purpose tests and triggering political committee status? [7] Would it be more appropriate to discard ''*a* major purpose'' analysis and use instead ''*the* major purpose'' analysis for these types of organizations? In this regard, should the Commission fashion a test whereby it would recognize three broad categories of activity for 501(c) organizations—''election influencing activity,'' ''legislative or executive lobbying activity,'' and ''educational, research, or other activity.'' If the organization put more resources, either financially or timewise, into ''election influencing activity'' than it put into either of the other two activities, the major purpose test would be met.

C. Treatment of Contributions for the Major Purpose Requirement

Should the major purpose requirement apply when an organization's status as a political committee is based upon its making in excess of $1,000 in any contributions or expenditures, or only when its status as a political committee is based solely upon its making of independent expenditures in excess of $1,000? In *Akins* v. *FEC,* 101 F.3d 731 (D.C. Cir. 1996), *vacated,* 524 U.S. 11 (1998), one appeals court interpreted *Buckley* and *MCFL* to require application of the major purpose test only when political committee status is based upon the organization's independent expenditures, not when it is based upon the organization's other expenditures, including contributions to political committees. *See Akins,* 101 F.3d at 742 (''the Court clearly distinguished *independent expenditures* and *contributions* as to their constitutional significance, and its references to a 'major purpose' test seem to implicate only the former''). Should the *Akins* court's interpretation be incorporated into the proposed rule, or should the major purpose requirement apply to organizations that exceed $1,000 in expenditures, not just those that exceed $1,000 in independent expenditures exclusively?

D. Proper Application of the Major Purpose Requirement

The Commission seeks comment regarding whether the definition of political committee in 11 CFR 100.5(a) should include a major purpose test along the lines set forth above or whether it should instead incorporate the major purpose requirement as an exception to the definition of ''political committee.'' For example, if the major purpose requirement is incorporated into the definition of political committee (as it is in the proposed rules), an organization, regardless of the amount of its contributions and expenditures, will not be considered to be a political committee unless it is shown to have a major purpose of nominating or electing candidates. This is essentially how the proposed rules described above would work. An alternative approach, which is not reflected in the proposed rules, would be to use the major purpose requirement as an exception to the definition of political committee. Under this alternative approach, an organization would be considered to be a political committee if its expenditures or contributions exceed the $1,000 threshold unless the organization has a major purpose other than nominating or electing candidates. This alternative approach would, to a certain extent, place the burden on the organization to show that it does not have a major purpose of nominating or electing candidates. Would this alternative approach reflect the correct reading of the major purpose requirement as set forth in *Buckley, MCFL* and other cases?

Although not reflected in the proposed rules, the Commission seeks comment on the proper application of the major purpose requirement to complex organizations that include a political committee within the organization. For instance, should the Commission impute major purpose across such organizations? Thus, if an organization includes a political committee, should all other committees or organizations within the complex organization be deemed to satisfy the major purpose test? Or should the Commission conclude that its current affiliation rules at 11 CFR 100.5(g) sufficiently address this issue and no amendments to the regulations are necessary?

IV. Conversion of Federally Permissible Funds to Federal Funds

The Commission recognizes that there may be a need to provide guidance to organizations that become political committees after operating for some time as a non-political committee organization, especially concerning two issues: (1) how the new political committee should demonstrate that the contributions and expenditures that it made prior to becoming a political organization were paid for with Federally permissible funds and (2) how it should treat the funds it has cash-on-hand on the day that it became a political committee. Consequently, to address these issues, this NPRM includes proposed subpart A—Organizations that Become Political Committees, which would set forth the requirements for existing organizations that become political committees under 11 CFR 100.5(a). The proposed rules would not apply to organizations that register with the Commission as a political committee prior to making any contributions, expenditures, independent expenditures or allocable expenditures. The proposed rules do not replace any of the Commission's existing rules applicable to political committees. All political committees, including the political committees subject to these proposed rules, would remain subject to all of the Commission's rules applicable to political committees.

One purpose of the proposed 11 CFR part 102, subpart A is to provide a mechanism for organizations that become political committees to convert into Federal funds some or all of the funds received prior to the time that they became political committees. As explained below, a political committee could convert these funds into Federal funds by contacting its recent donor(s), making certain disclosures, and seeking

[7] This is especially true for 501(c)(3) organizations because their communications are exempt from the definition of ''electioneering communications.'' *See* 11 CFR 100.29(c)(6). Thus, any disbursements for such communications would not count toward a 501(c)(3)'s major purpose as electioneering communications. Furthermore, the Supreme Court recognized that the Massachusetts Citizens for Life, Inc., a nonprofit corporation, could become a political committee if its independent expenditures become ''so extensive'' that it satisfies the major purpose requirement. *MCFL,* 479 U.S. at 262.

the donor(s)' consent to use the funds for the purpose of influencing Federal elections. Allowing new political committees to convert pre-existing funds into Federal funds would achieve two goals. First, it would allow political committees to account for contributions and expenditures made before they became political committees that were required under the Act and the Commission's regulations to be paid for with Federal funds (*i.e.,* funds that comply with the source prohibitions, amount limitations and other requirements of the Act). Non-political committees are already required to ''demonstrate through a reasonable accounting method that, whenever such an organization makes a contribution or expenditure, or payment, the organization has received sufficient funds subject to the limitations and prohibitions of the Act to make such contribution, expenditure, or payment.'' 11 CFR 102.5(b)(1). The proposed rules would provide guidance on the initial reporting requirements for non-political committees that subsequently become political committees but would not impose any new requirements on those groups that never become political committees. Second, the proposed rules would, under certain circumstances, allow political committees to transfer to their Federal account some of the funds in their possession when they became political committees.

The Commission seeks comment regarding the need for a mechanism for political committees to convert funds received prior to becoming a political committee into Federal funds. The proposed rules, as mentioned above, would apply only to those organizations that, prior to becoming a political committee, made contributions or expenditures that were required by the Act and the Commission's regulations to be paid for with funds that are subject to the amount limitations and source prohibitions of the Act. Should the Commission also provide a mechanism in the final rules for political committees that, prior to becoming a political committee, did not make any disbursements that were required to be paid for with funds that are subject to the limitations and prohibitions of the Act, to convert some or all of its funds received prior to becoming a political committee into Federal funds and then transfer those converted funds into its Federal account?

A. Proposed 11 CFR 102.50

Proposed 11 CFR 102.50 would set forth the definitions of four terms used in proposed subpart A. ''Allocable expenditures'' would be defined as expenditures that are allocable under 11 CFR 106.1 or 106.6. Given that proposed 11 CFR 100.115 would make partisan voter registration, partisan voter identification and partisan get-out-the-vote activities ''expenditures'' and that some of these activities would be encompassed by ''generic voter drive'' and subject to allocation in current section 106.6, should the final rules include these types of voter drive activities as ''allocable expenditures?''

''Covered period'' would be defined as the period of time beginning on January 1 of the calendar year immediately preceding the calendar year in which the organization first satisfies the definition of ''political committee'' in 11 CFR 100.5(a) and ending on the date that the organization first satisfies the definition of ''political committee'' in 11 CFR 100.5(a). This covered period is similar to the period in 2 U.S.C. 434(f)(2)(E) for disclosing information pertaining to individuals who donate $1,000 or more to persons who make electioneering communications. Should the Commission adopt a shorter or a longer covered period in the final rule?

For example, if an organization first satisfies the definition of political committee in 11 CFR 100.5(a) on March 15, 2004, the covered period for that organization would be January 1, 2003, until March 15, 2004. For an organization that first became a political committee on December 31, 2005, would have a covered period of January 1, 2004, until December 31, 2005. Consequently, the covered period for any organization would be at least one year, but would be no longer than two years.

''Federal funds'' would have the same meaning as in 11 CFR 300.2(g). Thus, it would mean funds that comply with the limitations, prohibitions and reporting requirements of the Act.

''Federally permissible funds'' would be defined as funds that comply with the amount limitations and source prohibitions of the Act and were received during the covered period by the organization becoming a political committee. Federally permissible funds are different from Federal funds because, although both comply with the source prohibitions and amount limitations of the Act, federally permissible funds do not comply with the solicitation and reporting requirements of the Act. Moreover, federally permissible funds would be limited to those funds received during the organization's covered period. Only a political committee's federally permissible funds would be able to be converted to Federal funds under the proposed rules.

Consequently, not all of the organizations pre-existing funds would be subject to conversion to Federal funds under the proposed rules. Only those pre-existing funds that comply with the amount limitations and source prohibitions of the Act (*i.e.*, federally permissible funds) would be subject to conversion to Federal funds. Consequently, funds donated to the organization by a corporation, a labor organization or foreign national could not be converted to Federal funds because these are prohibited sources under the Act. *See* 2 U.S.C. 441b and 441e. Likewise, a political committee would not be able to convert to Federal funds an entire $20,000 donation to the organization from an individual because this amount would exceed the $5,000 limit for individual contributions to non-connected political committees. *See* 2 U.S.C. 441a(a)(1)(C). Only the first $5,000 of such a donation would be able to be converted to Federal funds under the proposed rule. The remaining $15,000 would have to be treated as non-Federal funds.

B. Proposed 11 CFR 102.51

Proposed 11 CFR 102.51 provides that subpart A would apply to a committee, club, association, or other group of persons that satisfies the definition of ''political committee'' under 11 CFR 100.5(a) and that made contributions, expenditures, independent expenditures or allocable expenditures during the covered period. Consequently, the proposed rules would apply to any organization that meets the following two criteria: (1) It satisfies the Commission's definition of ''political committee'; and (2) it has made expenditures, allocable expenditures or allocable disbursements during the covered period.

C. Proposed 11 CFR 102.52

Proposed 11 CFR 102.52 would set forth the requirements for political committees that would be subject to proposed subpart A. Proposed paragraphs (a) and (b) would remind these political committees that they are required to register with the Commission and to establish a campaign depository. These requirements already exist under 11 CFR 102.1(d) and 103.2 and would not be altered under the proposed rules.

Proposed paragraph (c) would require each political committee that would be subject to proposed subpart A to determine the amount of expenditures and allocable expenditures and disbursements it made during its

covered period. Thus, under this provision, political committees would be required to determine how much of its spending in the period of time immediately before it became a political committee was required to have been paid for with Federal funds. For example, if a disbursement was an ''expenditure'' under the Act or the Commission's regulations, it would count toward this amount. Likewise, if a disbursement was an allocable expenditure, it would also go toward this amount.

Proposed paragraph (d) would require political committees subject to proposed subpart A to determine the amount of federally permissible funds that the political committee received during its covered period. Thus, only donations of $5,000 or less from persons other than corporations, labor organizations, foreign nationals and other prohibited sources would be counted toward this amount, provided that these donations were received by the organization during its covered period.

Proposed paragraph (e) would require the political committees that would be subject to proposed subpart A to file financial disclosure reports with the Commission in accordance with part 104 of the Commission's regulations and proposed 11 CFR 102.56. Part 104 of the Commission's regulations are the general reporting requirements applicable to all political committees, including those that also would be subject to proposed subpart A. Proposed 11 CFR 102.56 are reporting requirements that the Commission proposes to adopt as part of these proposed rules. These additional reporting requirements are discussed in detail below.

D. Proposed 11 CFR 102.53

Proposed 11 CFR 102.53(a) would require a political committee subject to proposed subpart A to treat the amount of expenditures and allocable expenditures and disbursements made during its covered period as debt owed by its Federal account to its non-Federal account. For example, if, under proposed section 102.52(c), a political committee determined that, during its covered period, it made $100,000 in expenditures and allocable expenditures and disbursements, its Federal account would owe $100,000 to its non-Federal account. Consequently, virtually every political committee that would be subject to proposed subpart A would, at the time it becomes a political committee, have debt owed by its Federal account to its non-Federal account.

Under proposed paragraph (b), a political committee would not be permitted to make any contributions, expenditures, independent expenditures or allocable expenditures until the debt owed by the Federal account to the non-Federal account is satisfied. Thus, a political committee would be unable to make any disbursements that must be paid for with Federal funds until the debt is satisfied pursuant to proposed section 102.53(c).

Proposed paragraph (c) would provide two methods for a political committee subject to proposed subpart A to satisfy the debt owed by its Federal account to its non-Federal account. The first method would be for the political committee to raise Federal funds and transfer those funds to its non-Federal account. The other method would be for the political committee to convert some or all of its federally permissible funds to Federal funds. The proposed rule would allow the political committee to satisfy the debt owed by its Federal account by using either method or both methods in combination.

As set forth above, the Commission is seeking comment regarding whether political committees should be permitted to maintain non-Federal accounts. How would the conversion to Federal funds operate if the Commission were to adopt a final rule prohibiting Federal political committees from maintaining non-Federal accounts?

E. Proposed 11 CFR 102.54

Proposed section 102.54 would set forth the procedure through which a political committee that is subject to proposed subpart A may convert some or all of its federally permissible funds to Federal funds. The proposed rule would provide a two-step process for a political committee to convert its federally permissible funds into Federal funds. First, the political committee would be required to send written notification to the donor(s) of any Federally permissible funds to be converted into Federal funds. The written notification would need to:

(1) Inform the donor(s) that the political committee has registered as a Federal political committee;
(2) Make all disclaimers required by 11 CFR 110.11;
(3) Inform the donor(s) of the amount of the federally permissible funds donated by the donor(s) that the political committee seeks to convert to Federal funds and request that the donor(s) grant written consent for the political committee to use that amount of federally permissible funds for the purpose of influencing Federal elections;
(4) Advise the donor(s) that they may grant written consent for an amount of federally permissible funds lower than the amount requested, and that they may refuse to grant consent entirely; and
(5) Inform the donor(s) that, by granting consent, the donor(s) will be deemed to have made a contribution to a Federal political committee, that the contribution is subject to the amount limitations and source prohibitions of the Act, and that the contribution will be deemed to have been made on the date that the written consent is signed by the donor(s).

Second, the political committee would be required to receive the written consent from the donor(s) within 60 days after the political committee first satisfies the definition of ''political committee'' in 11 CFR 100.5.

If the political committee satisfies the requirements of proposed 11 CFR 102.54, the funds for which it receives written consent pursuant to proposed paragraph (b) would be considered to be converted to Federal funds and may be used to satisfy the debt owed by the Federal account. The Commission notes that, under the proposed rules, the political committee would need to receive the written consent from the donor(s) within sixty days after the political committee becomes a political committee under 11 CFR 100.5. The funds for which the political committee receives written consent from the donor(s) after that date would not be able to be converted to Federal funds and used to satisfy the debt owed by the Federal account.

The Commission seeks comment generally regarding the proposed procedure for converting federally permissible funds into Federal funds. The written notice requirements under proposed section 102.54(a) are designed to serve at least two purposes. First, they would ensure that the donor(s) are fully informed that their donations will be or have been used by the political committee for the purpose of influencing Federal elections and that the donor(s) are given a reasonable opportunity to object to such use. Second, the disclosures would ensure that the donor(s) have adequate information to comply with the contributions limitations of the Act. Are any of the requirements for the written notice under proposed paragraph 102.54(a) unnecessary? Should any other requirements be added? Is it appropriate to require that the donor(s) grant their consent to the conversion of their donated funds in writing? Should

oral consent, perhaps subject to a requirement that the oral consent be memorialized in writing, be sufficient?

Should the Commission adopt the 60-day time limit in proposed paragraph 102.54(b)? The 60-day time limit is designed to ensure that any conversion of Federally permissible funds to Federal funds occurs shortly after the political committee achieves political committee status under 11 CFR 100.5(a). Limiting the time period for conversion also will allow for the Commission and the public to more easily assess a political committee's compliance with these proposed rules. Is a time limit necessary? Would a time period other than 60 days be preferable? If so, how long should the conversion period last?

Would it be preferable to adopt an implied consent procedure, whereby the political committee would send a written notification to the donor(s), but would not have to wait for the donor(s) to affirmatively consent to the conversion. Instead, the political committee may consider the donor(s) to have consented to the transfer unless and until it receives an affirmative objection to the conversion from the donor(s). Such a procedure would be similar to the procedures the Commission adopted for redesignation and reattribution of certain apparently excessive contributions to authorized candidate committees under 11 CFR 110.1(k)(3)(ii)(B) and 11 CFR 110.1(b)(5)(ii)(B). Are there reasons that the Commission should or should not adopt a similar regime to govern conversion of federally permissible funds to Federal funds in proposed subpart A?

F. Proposed 11 CFR 102.55

Proposed 11 CFR 102.55 would provide a mechanism for political committees to convert an amount of Federally permissible funds to Federal funds that is greater than the amount of debt owed by its Federal account. A political committee that successfully converts an amount of federally permissible funds to Federal funds that is greater than the amount of debt owed by its Federal account would be required to first use the converted funds to satisfy the debt owed by its Federal account. The surplus converted Federal funds (*i.e.*, the amount of converted federally permissible funds exceeding the amount of debt owed by the political committee's Federal account) may then be transferred to the political committee's Federal account. The amount of converted Federal funds transferred to the Federal account under this proposed section, however, may be no greater than the amount of cash-on-hand that the political committee had in its possession at the time it first became a political committee under 11 CFR 100.5(a).

For example, if a political committee has $50,000 in debt owed by its Federal account and is able to convert $75,000 of its Federally permissible funds into Federal funds pursuant to proposed section 102.54, it would be able to transfer the surplus $25,000 to its Federal account if it had at least $25,000 cash-on-hand in its possession at the time it became a political committee. If the political committee, however, had only $10,000 of cash-on-hand in its possession when it became a political committee, it would be able to transfer only $10,000 from its non-Federal account to its Federal account. If the political committee had zero cash-on-hand in its possession when it became a political committee, it would not be permitted to transfer any funds to its Federal account.

The Commission seeks comment regarding whether it is appropriate for the proposed rules to allow this surplus amount to be transferred to a political committee's Federal account. Would it be preferable to limit the conversion procedures only to the amount needed by the political committee to satisfy the debt owed by its Federal account? If it is advisable for the Commission to allow political committees to convert as much of their federally permissible funds into Federal funds as possible, and to transfer any surplus to their Federal account, should the rule limit the amount transferred to the amount of cash-on-hand in the possession of the political committee when it became a political committee?

G. Proposed 11 CFR 102.56

Proposed section 102.56 would set forth the initial reporting requirements for political committees that would be subject to proposed subpart A. Under proposed section 102.56, political committees that would be subject to proposed subpart A would be required to report certain information along with other required information in the political committee's first report due under 11 CFR 104.5. Thus, political committees that are subject to proposed subpart A are also subject to the reporting requirements of 11 CFR part 104, which apply to all political committees. Proposed section 102.56 would merely require a political committee that would be subject to proposed subpart A to report certain additional information related to its compliance with proposed subpart A. The additional subpart A information would be due whenever the political committee's first financial disclosure report is due under 11 CFR part 104.

Under proposed paragraph (a) a political committee that would be subject to proposed subpart A would be required to report the amount of expenditures and allocable expenditures and disbursements made by the political committee during its covered period. This figure would reflect the amount of debt the political committee's Federal account owes to its non-Federal account pursuant to proposed section 102.53(a). Under proposed paragraph (b), a political committee that would be subject to subpart A would be required to report the amount of any federally permissible funds converted to Federal funds under proposed 11 CFR 102.54. This figure would reflect the amount of converted Federal funds that are available for the political committee to satisfy the debt owed by its Federal account and, possibly, the amount of surplus converted Federal funds that the political committee may transfer to its Federal account pursuant to proposed 11 CFR 102.55(b).

Proposed paragraph (c) would require a political committee that is subject to proposed subpart A to report the identifying information required under 11 CFR 104.3(a)(4)(i). This is the contributor information that all political committees must report to the Commission when they receive contributions. This proposed provision is designed to require political committees that would be subject to subpart A to report this information for any donation of federally permissible funds that is converted to Federal funds.

Proposed paragraph (d) would require a political committee to report the difference between the amount reported under proposed paragraph (a), which is the amount of debt owed by the political committee's Federal account under proposed 11 CFR 102.53(a), and the amount reported under proposed paragraph (b), which is the amount of federally permissible funds converted to Federal funds under proposed 11 CFR 102.54. Consequently, the amount reported pursuant to proposed paragraph (d) would reflect whether the political committee has converted a sufficient amount of federally permissible funds to Federal funds to allow it to satisfy the debt owed by its Federal account. If not, the deficiency would be required to be reported as a debt owed by the Federal account. It would also reflect whether the political committee has converted an amount of federally permissible funds to Federal funds in excess of the amount of debt owed by the Federal account, thereby possibly permitting the political

committee to transfer some or all of the surplus funds to its Federal account pursuant to proposed 11 CFR 102.55(b).

Proposed paragraph (e) would require a political committee that would be subject to proposed subpart A to report the amount and date of any transfers to its Federal account made pursuant to proposed 11 CFR 102.55(b). This would permit the Commission to assess whether the political committee complied with the transfer requirements under proposed paragraph 102.55(b).

The Commission seeks comment regarding these additional reporting requirements that would apply to political committees that would be subject to proposed subpart A. Are any of these reporting requirements unnecessary or unduly burdensome? Are there additional reporting requirements that the Commission should include in the proposed rules?

V. Proposed 11 CFR 106.6—Allocation

Alternative 1–B includes proposed changes to the allocation rules to reflect other changes proposed in Alternative 1–B and for other purposes. The Commission has not determined that any changes to its allocation rules are appropriate, and is thus seeking comment to determine what, if any, changes are advisable. Although BCRA invalidated the Commission's allocation regime for national party committees and substituted a different allocation regime for other political party committees, it did not address the Commission's allocation regulations for separate segregated funds and nonconnected committees. Although *McConnell* criticized aspects of the Commission's allocation regulations regarding political party committees, allocation by nonconnected committees and separate segregated funds was not before the Supreme Court. *McConnell,* 124 S.Ct. at 660 and 661. Accordingly, the Commission seeks comments on whether either BCRA or *McConnell* requires, permits, or prohibits changes to the allocation regulations for separate segregated funds and nonconnected committees. Does either provide any guidance as to how the Commission should exercise any discretion it may have in this regard? Given *McConnell's* criticism of the Commission's prior allocation rules for political parties, is it appropriate for the regulations to allow political committees to have non-Federal accounts and to allocate their disbursements between their Federal and non-Federal accounts? If an organization's major purpose is to influence Federal elections, should the organization be required to pay for all of its disbursements out of Federal funds and therefore be prohibited from allocating any of its disbursements? Should any changes to the allocation regulations be effective immediately, or should their effective date be January 1, 2005, which is the first day of the year following the completion of the current election cycle? Does the Commission have a legal basis for delaying the effective date of any final rules it adopts?

Under the proposed rules in Alternative 1–B, separate segregated funds and nonconnected committees would be permitted to allocate expenses for partisan voter drives and for communications that promote or oppose a political party between Federal and non-Federal accounts according to the ''funds expended'' method, which is consistent with the requirements of current section 106.6(c) for administrative expenses and generic voter drives. The proposal would add a minimum Federal percentage to the ''funds expended'' method, and would also clarify the ratio in the ''funds expended'' method by further describing the Federal component of that ratio. Finally, the proposal would specify an allocation method for communications that promote both candidates and political parties.

A. Partisan Voter Drives

The proposal would replace the references to ''generic voter drives'' in current 11 CFR 106.6(b)(1)(iii) and (2)(iii) with references to ''partisan voter drives'' as defined in proposed 11 CFR 100.34. Political committees are currently required to allocate the costs for ''generic voter drives,'' which include voter drives that urge the general public to support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate. Under Alternative 1–B, most ''generic voter drives'' would be considered an allocable expenditure as a ''partisan voter drive'' under proposed 11 CFR 100.34 and 106.6(b)(1)(iii), (2)(iii), and (c). Voter drives that urge the general public to register, vote or support candidates associated with a particular issue would continue to be allocable under proposed 11 CFR 106.6(b)(1)(iii), (b)(2)(iii), and (c).

Partisan voter drives that include any communication that promotes, supports, attacks, opposes, or expressly advocates a clearly identified Federal candidate are expenditures subject to allocation under current 11 CFR 106.1, or, if the communication also promotes or opposes a political party, the partisan voter drive would be allocated under proposed 11 CFR 106.6(f), which is described below. In all other instances, expenditures for partisan voter drives would be allocable under the ''funds expended'' method of proposed 11 CFR 106.6(c). Because ''partisan voter drives'' would be defined as ''expenditures'' under proposed 11 CFR 100.34 and 100.115, the communications involved would not be limited to those that meet the definition of ''public communication'' in current 11 CFR 100.26 through 100.28.

Current 11 CFR 106.1(a)(1) provides that the allocation methods in that section shall be used to allocate payments involving both expenditures on behalf of one or more clearly identified Federal candidates and disbursements on behalf of one or more clearly identified non-Federal candidates. Proposed section 106.6(f), which is described below, would provide an allocation method similar in some respects to the ''expected benefit'' method under current section 106.1. Proposed section 106.6(g) would specify that public communications that promote, support, attack or oppose a clearly identified Federal candidate, without also promoting or opposing a political party, would be allocable under section 106.1 as expenditures or disbursements on behalf of the clearly identified Federal or non-Federal candidates. Under this approach, the Commission is not proposing any changes to 11 CFR 106.1(a)(1) and instead would rely on the limitations in proposed section 106.6(b), (c), (f) and (g) to ensure that all partisan voter drives except those that promote, support, attack, oppose, or expressly advocate a clearly identified Federal candidate would be subject to allocation under section 106.6(c). Comments are sought on this approach.

B. Public Communications That Promote or Support a Political Party

The proposal would also require nonconnected committees and separate segregated funds to allocate costs of public communications that promote or oppose a political party, which would be expenditures under proposed 11 CFR 100.116(b), under the ''funds expended'' method in proposed 11 CFR 106.6(c). If such a communication also promotes, supports, attacks, or opposes a clearly identified Federal candidate, it would be allocable under proposed 11 CFR 106.6(f), described below. Nonpartisan voter drives that include a public communication would be subject to the same allocation regime. A public communication that promotes or opposes a political party, but that does not also promote, support, attack or oppose a clearly identified Federal candidate, would be allocable under

proposed 11 CFR 106.6(c), without regard to references to Federal candidates or even express advocacy of candidates for State office. Thus, a communication that, for example, promotes the Republican Party and the Governor of New York's reelection would be allocable under proposed 11 CFR 106.6(c).

The charts below illustrate the allocation methods that would be required under Alternative 1–B.

Allocation for Nonconnected Committees and Separate Segregated Funds of Partisan Voter Drives That Include a Communication

In the communication,

How is the Federal Candidate Depicted?	Does it promote or oppose a political party?	Does it clearly identify a Non-Federal Candidate?	Allocation: citation and method
None	NO	NO	106.6(c) fund expended.
		YES	106.6(c) fund expended.
	YES	NO	106.6(c) fund expended.
		YES	106.6(c) fund expended.
Clearly ID'd Candidate	NO	NO	106.6(c) fund expended.
		YES	106.6(c) fund expended.
	YES	NO	106.6(c) fund expended.
		YES	106.6(c) fund expended.
PASO'd or Express Advocacy	NO	NO	106.1 = time/space (100% Fed).
		YES	106.1 = time/space.
	YES	NO	106.6(f) time/space & fund exp.
		YES	106.6(f) time/space & fund exp.

Allocation for Nonconnected Committees and Separate Segregated Funds of Public Communications and Non-Partisan Voter Drives That Include a Public Communication

In the communication,

How is the Federal Candidate Depicted?	Does it promote or oppose a political party?	Does it clearly identify a Non-Federal Candidate?	Allocation: citation and method
None	NO	NO	N/A
		YES	106.1 = time/space (100% NF)
	YES—*See* partisan voter drive allocation chart.		
Clearly ID'd candidate	NO	NO	N/A
		YES	106.1 = time/space
	YES—*See* partisan voter drive allocation chart.		
PASO'd or Express Advocacy	*See* partisan voter drive allocation chart.		

C. Minimum Federal percentage

The proposal would add a minimum Federal percentage to the ''funds expended'' allocation method. This minimum would be the same percentage that is applicable to State, district, and local political party committees' allocation of voter drives under current 11 CFR 106.7(d)(3). It varies with the Federal offices that appear on a particular State's ballot, ranging from 15%, in election years in which a State votes for candidates for the United States House of Representatives only, to 36%, in election years in which a State votes for president and a senator as well. *See* current 11 CFR 106.7(d)(3)(i) through (iv). Related changes to reporting requirements are also proposed for 11 CFR 104.10.

For nonconnected committees and separate segregated funds that conduct partisan voter drives, or engage in other activities subject to the ''funds expended'' allocation method, in more than one State, two alternative proposed rules are presented. Alternative 3–A would require such committees to use the greatest percentage applicable to any of the States in which the committee conducted such activities for all its disbursements allocable under proposed 11 CFR 106.6(c). Alternative 3–B would permit such committees to allocate such costs on a State-by-State basis according to the percentage applicable in each State. Under Alternative 3–B, a committee could choose to simplify its allocation by using the highest applicable percentage to avoid the complications of a State-by-State allocation.

The Commission is considering other minimum Federal percentages as alternatives to those presented in the proposed rules. Should the rules in 11 CFR 106.6 apply different minimum Federal percentages than those for State, district and local political party committees? Should the Commission adopt a fixed minimum Federal percentage? Should it select a higher minimum for committees that conduct activities in several States? For example, the allocation rule could specify that nonconnected committees and separate segregated funds that conduct activities in fewer than 10 States must use a minimum Federal percentage of 25 percent, while those that do so in 10 or more States would face a minimum Federal percentage of 50 percent. The 25 percent figure was chosen as the average of the four percentages in current 11 CFR 106.7(d)(3), and the 50 percent figure was chosen to reflect the broader scope of activities and as a slight reduction to the 60 percent or 65 percent applicable to national party committees under previous 11 CFR 106.5(b)(2), prior to its sunset on December 31, 2002. *See* 11 CFR 106.5(h)(2003). If the final rule should take such an approach, what should the minimum Federal percentages be?

D. Clarifying the Ratio in the ''Funds Expended'' Method

The ''funds expended'' allocation method provides that expenses are allocated between the Federal and non-

Federal accounts of a nonconnected committee or a separate segregated fund based on the ratio of Federal expenditures to total Federal and non-Federal disbursements made by the committee during the two-year Federal election cycle. Current section 106.6(c)(1) specifies that: ''In calculating its federal expenditures, the committee shall include only amounts contributed to or otherwise spent on behalf of specific federal candidates.'' The proposal would clarify that ''amounts * * * spent on behalf of specific Federal candidates'' includes independent expenditures and amounts spent on public communications that promote, support, attack, support, or oppose a clearly identified Federal candidate. *See* proposed 11 CFR 106.6(c)(1)(i). This proposal reflects the Commission's application of current regulations in a recent Advisory Opinion. *See* AO 2003–37, at 4 n.5. The Commission seeks comment on whether the conclusion in this Advisory Opinion should be expressly stated in proposed 11 CFR 106.6(c)(1)(i).

E. Public Communications That Promote a Political Party and a Federal Candidate

Proposed section 106.6(f) would specify an allocation method for public communications that promote or oppose a political party and promote, support, attack or oppose a clearly identified Federal candidate. This method would apply to this communication whether or not the communications also clearly identify a non-Federal candidate.

Proposed section 106.6(f) would provide an allocation method that combines the ''time and space'' method and the ''funds expended'' method for communications that support Federal candidates and a political party. The communication would first be subject to a ''time and space'' analysis to split the communication among the candidates and the political party. The portions attributed to candidates would be allocated to either the Federal or non-Federal accounts based on the candidates' status. The portion attributed to the political party would be allocated under the ''funds expended'' method in proposed 11 CFR 106.6(c).

This approach would be consistent with the Commission's analysis and conclusions based on the application of current regulations in a recent Advisory Opinion. *See* AO 2003–37, at 12. Should the Commission expressly incorporate this result in its allocation regulations?

F. Public Communications That Promote a Federal Candidate, Without Promoting or Opposing a Political Party

Proposed section 106.6(g) would specify that public communications that promote, support, attack or oppose a clearly identified Federal candidate without promoting or opposing a political party by a nonconnected committee or separate segregated fund would be allocable under current section 106.1. Nonpartisan voter drives that include a public communication with similar content would be subject to the same allocation requirements. The only other expenditures or disbursements by a nonconnected committee or separate segregated fund for a public communication or voter drive that would be allocable under current section 106.1 would involve communications that clearly identify non-Federal candidates, but do not promote, support, attack, oppose, or expressly advocate a Federal candidate.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

When an agency issues certain rulemaking proposals, the Regulatory Flexibility Act (''RFA'') requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' which will describe the impact of the proposed rule on small entities. 5 U.S.C. 603(a). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an initial regulatory flexibility analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Political Committees

One part of the proposed rule would amend the Commission's definition of ''political committee.'' Under the Federal Election Campaign Act of 1971, as amended, and the Commission's regulations, political committees have certain reporting obligations that do not apply to non-political committees. Moreover, there are restrictions and limitations on the receipt of funds by political committees that do not apply to non-political committees. This part of the proposed rule would directly affect only those organizations that are not currently political committees, but would fall within the amended definition of ''political committee'' in the proposed rule, if the Commission decides to amend the definition.

It is difficult for the Commission to estimate the number of organizations that may be affected by the proposed change in the definition of political committee. The Commission believes, however, that most of the organizations that would be affected by the proposed rule are ''political organizations'' organized under section 527 of the Internal Revenue Code. Under the North American Industry Classification System (''NAICS''), political organizations are considered to be ''small entities'' if they have less than $6 million in average annual receipts. The Commission estimates that all but a few of the 527 organizations that may be affected by the proposed rules, if adopted, have less than $6 million in average annual receipts and, therefore, qualify as small entities under the NAICS.

The Commission notes that a number of these political organizations are already registered with the Commission as political committees and therefore, would not be affected by the proposed change to the definition of political committee. The proposed rule also includes various exceptions. For example, the proposed rule would only affect those political organizations that: (1) Meet the ''major purpose'' test set forth in proposed section 100.5(a)(2) of the proposed rule; and (2) exceed the $1,000 expenditure and disbursement thresholds set forth in proposed section 100.5(a)(1) of the proposed rule. Moreover, the proposed rule would exempt from political committee status those political organizations that are involved primarily in state, as opposed to Federal, political activity. Consequently, while it is difficult for the Commission to estimate precisely the number of organizations that would be affected by the proposed rule, the Commission believes that, as a result of the exceptions described above, the proposed rule would not have an economic effect on a substantial number of the small entities.

Furthermore, the Commission does not believe that the proposed rule, if adopted, will have a significant economic impact on those small entities that would be affected. As stated above, the effect of the proposed rule would be to impose certain reporting requirements and restrictions on funding certain activities upon those political organizations that would become political committees under the amended definition of ''political committee.''

The reporting requirements, however, are not complicated and would not be costly to complete. For the most part, the reports would be filed electronically, using free software provided by the Commission. The Commission also provides free technical support and free access to the

Commission's Information Specialists to assist political committees in submitting the reports. It is highly unlikely that a political committee would need to hire additional staff or retain professional services to comply with the reporting requirements.

The Commission also notes that the Act and the Commission's regulations do not place any limit on the amount of funds that a political committee would be permitted to spend. The proposed rule would merely limit the types of funds that may be used to pay for certain activities, which are essentially those activities that fall within the definition of ''expenditure.'' Political committees are, and will remain, free to spend unlimited funds on those activities that do not fall within the definition of expenditure. Moreover, the Commission is considering alternatives that would have even less of an impact than those described above, including the possibility of not making any changes to the definition of ''political committee.''

Expenditures and Allocation

The proposed rule would also amend the Commission's definition of ''expenditure'' to include payments for activities that are not expressly included in the Commission's existing definition of expenditure. Whether a disbursement qualifies as an ''expenditure'' determines whether the disbursement must be paid for with Federal funds or may be paid for with non-Federal funds. It also impacts whether an organization satisfies the $1,000 expenditure threshold for political committee status. The proposed rule would also revise the Commission's rules regarding the allocation of certain disbursements between a political committee's Federal account and non-Federal account. Consequently, these parts of the proposed rule could impact any organization or individual that engages in activities in connection with a Federal election.

As explained above with respect to the proposed amendment of the definition of ''political committee,'' the proposed changes are unlikely to have a significant economic impact on small entities. Neither the proposed change in the definition of ''expenditure'' nor the proposed change in the allocation rules would limit the amount of money that may be raised or spent on electoral activity. The proposed rules would merely require that only funds raised in accordance with the Act may be spent in connection with Federal elections. Moreover, the Commission is considering alternatives that would have even less of an impact than those described above, including the possibility of not making any changes to the definition of ''expenditure'' and the allocation rules.

Certification

For the foregoing reasons, the Commission hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The Commission invites comment from members of the public who believe that the proposed rule will have a significant economic impact on a substantial number of small entities.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 102

Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 106

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 114

Business and industry, Elections, Labor.

For the reasons set out in the preamble, it is proposed to amend subchapter A of chapter I of title 11 of the Code of Federal Regulations as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 would continue to read as follows:

Authority: 2 U.S.C. 431, 434 and 438(a)(8).

2. Section 100.5 would be amended by revising the introductory paragraph and paragraph (a) to read as follows:

§ 100.5 Political committee (2 U.S.C. 431 (4), (5), (6)).

Political Committee means any group meeting the conditions set forth in paragraph (a), (b), (c), (d) or (e) of this section.

(a)(1) Except as provided in paragraphs (b), (c), (d), (e)(1), and (e)(3) of this section, *political committee* means any committee, club, association, or other group of persons:

(i) That receives contributions aggregating in excess of $1,000 or that makes expenditures aggregating in excess of $1,000 during a calendar year; and

(ii) For which the nomination or election of one or more Federal candidates is a major purpose.

Alternative 1–A

(iii) For purposes of paragraph (a)(1)(i) of this section only, the term *expenditure* shall include payments for Federal election activities described in 11 CFR 100.24(b)(1) through (b)(3) and payments for all or any part of an electioneering communication as defined in 11 CFR 100.29.

End of Alternative 1–A. For Alternative 1–B, *see* 11 CFR 100.34 to 114.4.

(2) For purposes of paragraph (a)(1) of this section, a committee, club, association or group of persons has the nomination or election of a candidate or candidates as a major purpose if it satisfies the conditions set forth in paragraph (a)(2)(i), (a)(2)(ii), (a)(2)(iii), or (a)(2)(iv) of this section.

(i) The organizational documents, solicitations, advertising, other similar written materials, public pronouncements, or any other communication of the committee, club, association or group of persons demonstrate that its major purpose is to nominate, elect, defeat, promote, support, attack or oppose a clearly identified candidate or candidates for Federal office or the Federal candidates of a clearly identified political party; and during the current calendar year or during any of the previous four calendar years, the committee, club, association or group of persons makes more than $10,000 total disbursements composed of any combination of the following:

(A) Contributions;

(B) Expenditures (including independent expenditures);

(C) Payments for Federal election activities described in 11 CFR 100.24(b)(1) through (b)(3); and

(D) Payments for all or any part of an electioneering communication as defined in 11 CFR 100.29.

(ii) More than 50 percent of the committee's, club's association's or group's total annual disbursements during any of the previous four calendar years are composed of any combination of the following:

(A) Contributions;

(B) Expenditures (including independent expenditures);

(C) Payments for Federal election activities described in 11 CFR 100.24(b)(1) through (b)(3); and

(D) Payments for all or any part of an electioneering communication as defined in 11 CFR 100.29.

(iii) During the current calendar year or during any of the previous four

calendar years, the committee, club, association or group of persons makes more than $50,000 in total disbursements composed of any combination of the following:

(A) Contributions;

(B) Expenditures (including independent expenditures);

(C) Payments for Federal election activities described in 11 CFR 100.24(b)(1) through (b)(3); and

(D) Payments for all or any part of an electioneering communication as defined in 11 CFR 100.29.

Alternative 2–A

(iv) The committee, club, association or group of persons is organized under Section 527 of the Internal Revenue Code, 26 U.S.C. 527, except that this paragraph (a)(2)(iv) shall not apply to:

(A) The campaign organization of an individual seeking nomination, election, appointment or selection to a non-Federal office;

(B) A committee, club, association or group of persons that is organized solely for the purpose of promoting the nomination or election of a candidate or candidates to a non-Federal office;

(C) A committee, club, association or group of persons whose election or nomination activities relate solely to elections where no candidate for Federal office appears on the ballot;

(D) A committee, club, association, or group of persons that operates solely within one State and, pursuant to State law, must file financial disclosure reports with one or more branches, departments or agencies of that State's government, showing all its activities in that State; or

(E) A committee, club, association, or group of persons that is organized solely for the purpose of influencing the nomination or appointment of individuals to a non-elected office, or the nomination, election, or selection of individuals to leadership positions within a political party.

Alternative 2–B

(iv) The committee, club, association or group of persons is organized under Section 527 of the Internal Revenue Code, 26 U.S.C. 527.

* * * * *

Alternative 1–B

3. Section 100.34 would be added to read as follows:

§ 100.34 Partisan voter drives.

Partisan voter drive means any or all of the following:

(a) Voter registration activity as described in 11 CFR 100.24(a)(2) and (b)(1), except for voter registration activity described in 11 CFR 100.133;

(b) Voter identification as described in 11 CFR 100.24(a)(1), (a)(4), and (b)(2)(i), except for voter identification when no effort has been or will be made to determine or record the party or candidate preference of individuals on the voter list; and

(c) Get-out-the-vote activity as described in 11 CFR 100.24(a)(1), (a)(3), and (b)(2)(iii), except for get-out-the-vote activity described in 11 CFR 100.133.

4. Section 100.57 would be added to subpart B to read as follows:

§ 100.57 Solicitations with express advocacy.

A gift, subscription, loan, advance, or deposit of money or anything of value made by any person in response to any communication that includes material expressly advocating, as defined in 11 CFR 100.22, a clearly identified Federal candidate is a contribution to the person making the communication.

5. Section 100.115 would be added to subpart D to read as follows:

§ 100.115 Partisan voter drives.

A payment, distribution, loan, advance, or deposit of money or anything of value made by, or on behalf of any person for partisan voter drives, as described in 11 CFR 100.34, is an expenditure, except Levin funds, as defined in 11 CFR 300.2(i), that are disbursed for partisan voter drives are not expenditures.

6. Section 100.116 would be added to subpart D to read as follows:

§ 100.116 Certain public communications.

A payment, distribution, loan, advance, or deposit of money or anything of value made by, or on behalf of any person for a public communication, as defined in 11 CFR 100.26, is an expenditure if the public communication:

(a) Refers to a clearly identified candidate for Federal office, and promotes or supports, or attacks or opposes any candidate for Federal office; or

(b) Promotes or opposes any political party.

7. Section 100.133 would be revised to read as follows:

§ 100.133 Nonpartisan voter registration and get-out-the-vote activities.

Any cost incurred for activity designed to encourage individuals to register to vote or to vote is not an expenditure if:

(a) It does not include a communication that promotes, supports, attacks, or opposes a Federal or non-Federal candidate or that promotes or opposes a political party;

(b) No effort is or has been made to determine the party or candidate preference of individuals before encouraging them to register to vote or to vote; and

(c) Information concerning likely party or candidate preference has not been used to determine which individuals to encourage to register to vote or to vote.

(d) Corporations and labor organizations that engage in such activity shall comply with the additional requirements set forth in 11 CFR 114.4(c) and (d). *See also* 11 CFR 114.3(c)(4).

8. Section 100.149 would be amended by revising the introductory paragraph to read as follows:

§ 100.149 Voter registration and get-out-the-vote activities for Presidential candidates (''coattails'' exception).

Notwithstanding 11 CFR 100.115, the payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of the Presidential and Vice Presidential nominee(s) of that party is not an expenditure for the purpose of influencing the election of such candidate(s) provided that the following conditions are met:

* * * * *

9. Section 100.155 would be added to read as follows:

§ 100.155 Allocated amounts.

Notwithstanding 11 CFR 100.115 or 100.116, any non-Federal funds disbursed by a separate segregated fund pursuant to 11 CFR 106.6(b)(1)(iii) through (vi) or by a nonconnected committee pursuant to 11 CFR 106.6(b)(2)(iii) through (vi) are not expenditures.

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

10. The authority citation for part 102 would continue to read as follows:

Authority: 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), 441d.

11. Sections 102.18 through 102.49 would be added and reserved.

12. Subpart A would be added to read as follows:

Subpart A—Conversion Rules

Sec.
102.50 What are the definitions for this subpart A?
102.51 To which organizations does this subpart A apply?
102.52 What must a committee, club, association, or other group of persons do

upon becoming a political committee under 11 CFR 100.5(a)?
102.53 How must a new political committee treat the amount of contributions, expenditures, independent expenditures and allocable expenditures that it made during the covered period (before it became a political committee)?
102.54 How can a political committee convert its Federally permissible funds to Federal funds?
102.55 What if the political committee is able to convert an amount of Federally permissible funds to Federal funds that is greater than the amount of contributions, expenditures, independent expenditures and allocable expenditures that it made during the covered period?
102.56 What are the initial reporting requirements?

Subpart A—Conversion Rules

§ 102.50 What are the definitions for this subpart A?

For purposes of this subpart A, the following terms are defined as follows:

Allocable expenditures mean expenditures that are allocable under 11 CFR 106.1 or 106.6.

Covered period means the period of time beginning on January 1 of the calendar year immediately preceding the calendar year in which a committee, club, association, or other group of persons first satisfies the definition of ''political committee'' in 11 CFR 100.5(a) and ending on the date that the committee, club, association, or other group of persons first satisfies the definition of ''political committee'' in 11 CFR 100.5(a).

Federal funds has the same meaning as in 11 CFR 300.2(g).

Federally permissible funds mean funds that comply with the amount limitations and source prohibitions of the Act and were received during the covered period by the committee, club, association, or other group of persons that becomes a political committee.

§ 102.51 To which organizations does this subpart A apply?

This subpart A applies to a committee, club, association, or other group of persons that satisfies the definition of ''political committee'' under 11 CFR 100.5(a) and that made contributions, expenditures, independent expenditures, or allocable expenditures during the covered period.

§ 102.52 What must a committee, club, association, or other group of persons do upon becoming a political committee under 11 CFR 100.5?

The committee, club, association, or other group of persons, upon becoming a political committee shall:

(a) File a Statement of Organization pursuant to 11 CFR 102.1(d);

(b) Establish a campaign depository pursuant to 11 CFR 103.2;

(c) Determine the amount of contributions, expenditures, independent expenditures and allocable expenditures that it made during the covered period;

(d) Determine the amount of federally permissible funds that it received; and

(e) File financial disclosure reports with the Commission in accordance with 11 CFR part 104 and 11 CFR 102.56.

§ 102.53 How must a new political committee treat the amount of contributions, expenditures, independent expenditures and allocable expenditures that it made during the covered period (before it became a political committee)?

(a) A political committee must treat the amount of contributions, expenditures, independent expenditures, and allocable expenditures that it made during the covered period as a debt owed by its Federal account to its non-Federal account.

(b) The political committee may not make any additional contributions, expenditures, independent expenditures or allocable expenditures until this debt is satisfied.

(c) The political committee may satisfy this debt by:

(1) Converting some or all of its Federally permissible funds to Federal funds pursuant to this subpart A;

(2) Raising new Federal funds and transferring the Federal funds to the non-Federal account; or

(3) A combination of paragraphs (c)(1) and (c)(2) of this section.

§ 102.54 How can a political committee convert its Federally permissible funds to Federal funds?

A political committee may convert its Federally permissible funds to Federal funds only in accordance with this section. To convert Federally permissible funds to Federal funds, the political committee shall:

(a) Send a written notification to the donor(s) of the Federally permissible funds that the political committee seeks to convert to Federal funds. The written notification must:

(1) Inform the donor(s) that the political committee has registered with the Commission as a Federal political committee;

(2) Make all disclaimers required by 11 CFR 110.11;

(3) Inform the donor(s) of the amount of their donation that the political committee seeks to convert to Federal funds and request that the donor(s) grant written consent for the political committee to use that amount of their donation for the purpose of influencing Federal elections;

(4) Advise the donor(s) that they may grant written consent for an amount less than the amount the political committee seeks to convert to Federal funds and that they may refuse to grant consent to convert any of the funds; and

(5) Advise the donor(s) that, by granting written consent, the donor(s) will be considered to have made a contribution to the political committee, that the contribution will be subject to the amount limitations in 2 U.S.C. 441a(a), and that the contribution will be considered made on the date that the written consent is signed by the donor(s); and

(b) Receive the written consent described in paragraph (a) of this section within 60 days after first satisfying the definition of ''political committee'' in 11 CFR 100.5(a).

§ 102.55 What if the political committee is able to convert an amount of Federally permissible funds to Federal funds that is greater than the amount of contributions, expenditures, independent expenditures and allocable expenditures that it made during the covered period?

If the political committee is able to convert an amount of Federally permissible funds to Federal funds that is greater than the amount of contributions, expenditures, independent expenditures, and allocable expenditures that it made during the covered period, the political committee:

(a) Must use the converted Federal funds to satisfy the debt described in 11 CFR 102.53; and

(b) May, but is not required to, transfer to its Federal account the remaining converted Federal funds. The amount of converted Federal funds transferred to the political committee's Federal account under this section, however, may not exceed the total amount of funds the political committee had cash-on-hand on the date that it first satisfied the definition of political committee under 11 CFR 100.5(a).

§ 102.56 What are the initial reporting requirements?

In addition to filing its Statement of Organization under 11 CFR 102.2, the political committee shall include the following information along with other required information in the first report due under 11 CFR 104.5:

(a) All contributions, expenditures, independent expenditures and allocable expenditures it made during the covered period;

(b) The amount of any Federally permissible funds that have been

converted to Federal funds pursuant to 11 CFR 102.54;

(c) The information required in 11 CFR 104.3(a)(4)(i) for each donor who provided written consent under 11 CFR 102.54;

(d) The amount described in paragraph (a) of this section minus the amount described in paragraph (b) of this section as a debt owed by the Federal account to the non-Federal account; and

(e) The amount and date of any transfers made under 11 CFR 102.55.

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

13. The authority citation for part 104 would continue to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), 439a, and 441a.

14. Section 104.10 would be amended by revising the introductory text in paragraph (b), the heading in (b)(1), and paragraph (b)(1)(i) and the introductory text in paragraph (b)(1)(ii) to read as follows:

§ 104.10 Reporting by separate segregated funds and nonconnected committees of expenses allocated among candidates and activities.

* * * * *

(b) *Expenses allocated among activities.* A political committee that is a separate segregated fund or a nonconnected committee and that has established separate Federal and non-Federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate between those accounts its administrative expenses and its costs for fundraising and partisan voter drives according to 11 CFR 106.6, and shall report those allocations according to paragraphs (b)(1) through (5) of this section, as follows:

(1) *Reporting of allocation of administrative expenses and costs of partisan voter drives.*

(i) In the first report in a calendar year disclosing a disbursement for administrative expenses or partisan voter drives, as described in 11 CFR 106.6(b), the committee shall state the allocation ratio to be applied to these categories of activity according to 11 CFR 106.6(c), (f), or (g), as applicable, and the manner in which it was derived. The committee shall also state whether the calculated ratio or the minimum Federal percentage required by 11 CFR 106.6(c)(1)(ii) will be used.

(ii) In each subsequent report in the calendar year itemizing an allocated disbursement for administrative expenses or partisan voter drives:

* * * * *

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

15. The authority citation for part 106 would continue to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

16. Section 106.6 would be amended by:

a. Removing the words ''(c) and (d)'' from paragraph (a) and adding in their place the words ''(c), (d), (f) and (g)''; and

b. Revising the introductory text in paragraph (c) and paragraphs (b)(1)(iii), (b)(2)(iii), (c)(1), and (e)(2)(ii)(B) and adding paragraphs (b)(1)(iv), (b)(1)(v), (b)(1)(vi), (b)(2)(iv), (b)(2)(v), (b)(2)(vi), (f) and (g) to read as follows:

§ 106.6 Allocation of expenses between Federal and non-Federal activities by separate segregated funds and nonconnected committees.

* * * * *

(b) * * *

(1) * * *

(iii) Partisan voter drives as described in 11 CFR 100.34 or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without including a public communication that is described in paragraph (b)(1)(iv), (v), or (vi) of this section;

(iv) Public communications that promote or oppose a political party, as described in 11 CFR 100.116(b), but do not promote, support, attack, or oppose a clearly identified Federal candidate, as described in 11 CFR 100.116(a);

(v) Public communications that promote, support, attack, or oppose a clearly identified Federal candidate, as described in 11 CFR 100.116(a), and that promote or oppose a political party, as described in 11 CFR 100.116(b); and

(vi) Public communications that promote, support, attack, or oppose a clearly identified Federal candidate, as described in 11 CFR 100.116(a), but that do not promote or oppose a political party, as described in 11 CFR 100.116(b).

(2) * * *

(iii) Partisan voter drives as described in 11 CFR 100.34 or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without including a public communication that is described in paragraph (b)(2)(iv), (v), or (vi) of this section;

(iv) Public communications that promote or oppose a political party, as described in 11 CFR 100.116(b), but do not promote, support, attack, or oppose a clearly identified Federal candidate, as described in 11 CFR 100.116(a);

(v) Public communications that promote, support, attack, or oppose a clearly identified Federal candidate, as described in 11 CFR 100.116(a), and that promote or oppose a political party, as described in 11 CFR 100.116(b); and

(vi) Public communications that promote, support, attack, or oppose a clearly identified Federal candidate, as described in 11 CFR 100.116(a), but that do not promote or oppose a political party, as described in 11 CFR 100.116(b).

(c) *Method for allocating administrative expenses, costs of partisan voter drives, and certain public communications.* Nonconnected committees and separate segregated funds shall allocate their administrative expenses, costs of partisan voter drives, and costs of public communications that promote or support any political party as described in paragraph (b)(1)(i) through (iv) or (b)(2)(i) through (iv) of this section, according to the funds expended method, described in paragraphs (c)(1) and (2) as follows:

(1)(i) Under this method, expenses shall be allocated based on the ratio of Federal expenditures to total Federal and non-Federal disbursements made by the committee during the two-year Federal election cycle, subject to the minimum Federal percentage described in paragraph (c)(1)(ii) of this section. This ratio shall be estimated and reported at the beginning of each Federal election cycle, based upon the committee's Federal and non-Federal disbursements in a prior comparable Federal election cycle or upon the committee's reasonable prediction of its disbursements for the coming two years. In calculating its Federal expenditures, the committee shall include only amounts contributed to or otherwise spent on behalf of specific Federal candidates, including independent expenditures and amounts spent on public communications that promote, attack, support, or oppose clearly identified Federal candidates. Calculation of total Federal and non-Federal disbursements shall also be limited to disbursements for specific candidates, and shall not include overhead or other generic costs.

(ii) *Minimum Federal percentage for administrative expenses*, partisan voter drives, and certain public communications. The minimum Federal percentage for any costs allocable under paragraph (c) of this section is as follows:

(A) For a nonconnected committee or a separate segregated fund that conducts

partisan voter drives in or distributes public communications subject to allocation under paragraph (c) of this section to only one State, the minimum Federal percentage shall be the percentage in 11 CFR 106.7(d)(3)(i), (ii), (iii), or (iv) that is applicable to the Federal elections in that State.

Alternative 3–A

(B) For a nonconnected committee or a separate segregated fund that conducts partisan voter drives in or distributes public communications subject to allocation under paragraph (c) of this section to more than one State, the minimum Federal percentage shall be the greatest percentage in 11 CFR 106.7(d)(3)(i), (ii), (iii), or (iv) that is applicable to any of the Federal elections in any of the States in which the nonconnected committee or separate segregated fund conducts activities allocable under paragraph (c) of this section.

Alternative 3–B

(B) For a nonconnected committee or a separate segregated fund that conducts partisan voter drives in or distributes public communications subject to allocation under paragraph (c) of this section to more than one State, the minimum Federal percentage for each State in which the nonconnected committee or separate segregated fund conducts activities allocable under paragraph (c) of this section shall be the percentage in 11 CFR 106.7(d)(3)(i), (ii), (iii), or (iv) that is applicable to the Federal elections in that State.

* * * * *

(e) * * *

(2) * * *

(ii) * * *

(B) Except as provided in paragraph (d)(2) of this section or in 11 CFR part 102, subpart A, such funds may not be transferred more than 10 days before or more than 60 days after the payments for which they are designated are made.

* * * * *

(f) *Method for allocating public communications that promote, support, attack or oppose a clearly identified Federal candidate, and promote or oppose a political party.* Nonconnected committees and separate segregated funds shall allocate public communications described in paragraphs (b)(1)(v) or (b)(2)(v) of this section as follows:

(1) The public communication shall be attributed according to the proportion of space and time devoted to each candidate and political party as compared to the total space and time devoted to all candidates and political party;

(2) The portion of the public communication that is attributed to the Federal candidate(s) shall be allocated to the nonconnected committee's or separate segregated fund's Federal account;

(3) The portion of the public communication that is attributed to the political party shall be allocated in accordance with paragraph (c) of this section; and

(4) The portion of the public communication that is attributed to clearly identified non-Federal candidate(s), if any, may be allocated to either the Federal or non-Federal account.

(g) *Method for allocating public communications that promote, support, attack or oppose a clearly identified Federal candidate, without promoting or opposing a political party.* Nonconnected committees and separate segregated funds shall allocate public communications described in paragraphs (b)(1)(vi) and (b)(2)(vi) of this section under 11 CFR 106.1 as expenditures or disbursements on behalf of the clearly identified candidates.

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

17. The authority citation for part 114 would continue to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 434, 437d(a)(8), 438(a)(8), 441b.

18. Section 114.4 would be amended by revising paragraphs (c)(2), (c)(3), and the introductory text of paragraph (d) to read as follows:

§ 114.4 Disbursements for communications beyond the restricted class in connection with a Federal election.

* * * * *

(c) * * *

(2) *Registration and voting communications.* A corporation or labor organization may make registration and get-out-the-vote communications to the general public, only to the extent permitted by 11 CFR 100.133, and provided that the communications do not expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party. The preparation and distribution of registration and get-out-the-vote communications shall not be coordinated with any candidate(s) or political party. A corporation or labor organization may make communications permitted under this section through posters, billboards, broadcasting media, newspapers, newsletter, brochures, or similar means of communication with the general public.

(3) *Official registration and voting information.* A corporation or labor organization may engage in the activities described in paragraphs (c)(3)(i) through (iii) of this section only to the extent permitted by 11 CFR 100.133.

* * * * *

(d) *Registration and get-out-the-vote drives.* A corporation or labor organization may support or conduct voter registration and get-out-the-vote drives that are aimed at employees outside its restricted class and the general public in accordance with the conditions set forth in paragraphs (d)(1) through (d)(6) of this section and only to the extent permitted by 11 CFR 100.133. Registration and get-out-the-vote drives include providing transportation to the polls or to the place of registration.

* * * * *

Dated: March 4, 2004.

Bradley A. Smith,

Chairman, Federal Election Commission.

[FR Doc. 04–5290 Filed 3–10–04; 8:45 am]

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Federal Register

Thursday,
March 11, 2004

Part IV

Securities and Exchange Commission

17 CFR Part 270

Mandatory Redemption Fees for Redeemable Fund Securities; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–26375A; File No. S7–11–04]

RIN 3235–AJ17

Mandatory Redemption Fees for Redeemable Fund Securities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is proposing a new rule under the Investment Company Act that would require mutual funds (with certain limited exceptions) to impose a two percent redemption fee on the redemption of shares purchased within the previous five days. The redemption fee would be retained by the fund. The rule is designed to require short-term shareholders to reimburse the mutual fund for costs incurred when they use the fund to implement short-term trading strategies, such as market timing.

DATES: Comments must be received on or before May 10, 2004.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method only. Comments in paper format should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments in electronic format should be submitted to the following E-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–11–04; if E-mail is used, this file number should be included on the subject line. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549, and also will be available on the Commission's Internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Shaswat K. Das, Senior Counsel, or C. Hunter Jones, Assistant Director, Office of Regulatory Policy, (202) 942–0690, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on proposed rule 22c–2 [17 CFR 270.22c–2] and proposed amendments to rule 11a–3 [17 CFR 270.11a–3] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the ''Investment Company Act'' or the ''Act'').

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I. Background

Mutual funds are attractive to even the smallest investors because they offer easy access to national and international securities markets.[2] Mutual funds allow investors to pool their savings with those of other investors so that they may benefit from professional investment management, diversification, and liquidity. Fund shareholders share the losses and the gains of the fund, and also share its costs.

Some fund investors take advantage of this collective relationship by frequently buying and redeeming fund shares. These investors may frequently buy shares and soon afterwards sell them, in reaction to market news or because of a change of heart. Such excessive trading occurs at the expense of long-term investors, diluting the value of their shares.[3] It also may disrupt the management of the fund's portfolio and raise a fund's transaction costs because the fund manager must either hold extra cash or sell investments at inopportune times to meet redemptions.[4]

Some frequent fund traders seek short-term profits by buying and selling shares in anticipation of changes in market prices, *e.g.*, market timing.[5] Some have exploited pricing inefficiencies in which the price of mutual fund shares does not accurately reflect the current market value of the securities held by the fund, *i.e.*, time-zone arbitrage.[6] Mutual funds are a

[1] We do not edit personal, identifying information, such as names or E-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

[2] In this release, we use the term ''mutual fund'' or ''fund'' to mean an open-end investment company that is registered or required to register under section 8 of the Investment Company Act [15 U.S.C. 80a–8], and includes a series of a registered investment company that is a series company. *See* proposed rule 22c–2(f)(2).

[3] *See* Jason Greene & Charles Hodges, *The Dilution Impact of Daily Fund Flows on Open-end Mutual Funds: Evidence and Policy Solutions,* 65 J. Fin. Econ., 131–158 (2002) (estimating annualized dilution from frequent trading, based on market timing, of 0.48% in international funds: ''the dilution impact has brought about a net wealth transfer from passive shareholders to active traders in international funds in excess of $420 million over a 26-month period.''). *See also* Roger M. Edelen, *Investor Flows and the Assessed Performance of Open-end Mutual Funds,''* 53 J. Fin. Econ. 439, 457 (1999) (quantifying the costs of liquidity in mutual funds as $0.017 to $0.022 per dollar of liquidity-motivated trading). *See also* Ken Hoover, *Why mutual funds discourage timers; Two forms of practice; They increase expenses, can disrupt portfolios and rob other investors,* Investor's Business Daily, Sept. 17, 2003, at AO9.

[4] Frequent trading also may result in unwanted taxable capital gains for the remaining fund shareholders.

[5] The Commission has settled a number of enforcement actions alleging federal securities law violations by investment advisers who permitted market timing transactions in a manner inconsistent with the funds' stated policies. *See, e.g.*, In re Massachusetts Financial Services Co., Investment Company Act Release No. 26347 (Feb. 5, 2004) (finding that investment adviser and two of its executives violated federal securities laws by allowing widespread market timing trading in certain funds in contravention of those funds' prospectus disclosures); In re Alliance Capital Management, L.P., Investment Company Act Release No. 26312 (Dec. 18, 2003) (finding that investment adviser violated federal securities laws by allowing market timing in certain of its mutual funds in exchange for fee-generating investments, or ''sticky assets,'' in its hedge funds and other mutual funds); In re Putnam Investment Management, LLC, Investment Company Act Release No. 26255 (Nov. 13, 2003) (finding that investment adviser violated Investment Advisers Act and antifraud provisions of the federal securities laws by failing to disclose potentially self-dealing short-term trading of mutual fund shares by several of its employees, failing to take adequate steps to detect and deter such trading activity, and failing to supervise employees who committed violations); In re Connelly, Jr., Investment Company Act Release No. 26209 (Oct. 16, 2003) (finding that an executive of an investment adviser to a fund complex, in derogation of fund disclosures, violated federal securities laws by approving agreements that allowed select investors to market time certain funds in the complex).

We also have recently instituted numerous enforcement actions involving market timing. *See, e.g.,* SEC v. Mutuals.com, Inc., Civil Action No. 303 CV 2912D (N.D. Tex. Dec. 4, 2003) (alleging that dually registered broker-dealer and investment adviser, three of its executives, and two affiliated broker-dealers assisted institutional brokerage customers and advisory clients in carrying out and concealing thousands of market timing trades and illegal late trades in shares of hundreds of mutual funds); SEC v. Invesco Funds Group, Civil Action No. 03-N–2421 (PAC) (D. Colo. Dec. 2, 2003) (alleging that investment adviser, with approval of its president and chief executive officer, entered into market timing arrangements with more than sixty broker-dealers, hedge funds, and advisers without disclosing these arrangements to the affected mutual funds' independent directors or shareholders); SEC v. Pilgrim, Baxter & Associates, Ltd., Civil Action No. 03–CV–6341 (E.D. Penn. Nov. 20, 2003) (alleging that investment adviser and two senior executives had permitted a hedge fund, in which one of the executives had a substantial financial interest, to engage in repeated short-term trading of several mutual funds). A number of state actions are also pending.

[6] *See* Bridget Hughes, *Deterring Market-Timers in International Funds,* Morningstar.com (Sept. 24,

prime vehicle for abusive market timing activity because they provide for daily redemptions and the long-term investors bear the transactional costs of those redemptions.

Many funds have taken steps to deter excessive trading or have sought reimbursement from traders for the costs of their excessive transactions.[7] These steps frequently include imposing redemption fees.[8] Today, funds that impose a redemption fee often charge a two percent fee for redeeming fund securities that are held for less than a certain amount of time, as described in the fund's prospectus.[9] These funds therefore have generally estimated their redemption-related costs to be at least two percent of amounts redeemed.[10]

The Investment Company Act was enacted to protect the interests of mutual fund investors. Many provisions of the Act guard against overreaching by the fund's adviser. Other provisions, however, protect fund shareholders from each other.[11] One of the most important of these is section 22(c), which, together with our rule 22c–1, requires that each redeeming shareholder receive his pro rata portion of the fund's net assets. These provisions are designed to prevent dilution of the interests of fund shareholders.[12]

Today, we are using our authority under section 22(c) of the Act to propose a new rule requiring funds (with certain exceptions) to impose a two percent redemption fee on shares held for five business days or less.[13] Proposed rule 22c–2, which we describe in more detail below, is designed to reduce or eliminate the opportunity of short-term traders to exploit other investors in the mutual fund by (i) requiring them to reimburse the fund for the approximate redemption-related costs incurred by the fund as a result of their trades, and (ii) discouraging short-term trading of mutual fund shares by reducing the profitability of the trades.

Our proposal supplements the other measures the Commission has recently taken to address short-term trading, including abusive market timing activity.[14] As discussed in Section II.F., of this Release, our proposals are not designed to be an exclusive cure for the problem of abusive market timing, which often (but need not) involves rapid trading strategies. Conversely, our proposal is not designed to solely address large traders. The costs imposed on long-term investors in funds by the cumulative effect of many smaller short-term traders may be greater than those imposed by a few large traders. If adopted, the proposal would allow funds to recoup some, if not all, of these costs.

II. Discussion

A. Two Percent Redemption Fee

Proposed rule 22c–2 would require mutual funds to impose a fee of two percent of the proceeds from fund shares redeemed within five business days of their purchase. The rule would not permit funds to impose a higher or lower fee than two percent.[15] Each fund, unless excepted, would have to impose the fee.[16]

2003) (available at *http://news.morningstar.com/doc/news/0,2,96909,00.html);* Elliot Blair Smith, *Investor Took Advantage of Time-Zone Lag,* USA Today, Sept. 15, 2003, at 3B; Kathleen Gallagher, *In Funds, It Can Be a Matter of Timing; Arbitrageurs Take Advantage of Price Inefficiencies,* Milwaukee Journal Sentinel, Nov. 30, 2003, at O1D. *See also* Compliance Programs of Investment Companies and Investment Advisers, Investment Company Act Release No. 26299 (Dec. 17, 2003) [68 FR 74714 (Dec. 24, 2003)] (adopting rule 38a–1 under the Investment Company Act) at nn. 40–42 and accompanying text (''When fund shares are mispriced, short-term traders have an arbitrage opportunity they can use to exploit a fund and disadvantage the fund's long-term investors by extracting value from the fund without assuming any significant investment risk.'').

[7] Some of the approaches that funds have adopted include: (i) restricting exchange privileges, including delaying both the redemption and purchase sides of an exchange; (ii) limiting the number of trades within a specified period; (iii) delaying the payment of proceeds from redemptions for up to seven days (the maximum delay permitted under section 22(e) of the Act); and (iv) identifying market timers and restricting their trading or barring them from the fund. *See also* Disclosure Regarding Market Timing and Selective Disclosure of Portfolio Holdings, Investment Company Act Release No. 26287 (Dec. 11, 2003) [68 FR 70402 (Dec. 17, 2003)] (Commission proposed to require that funds provide specific disclosure regarding their market timing policies and practices concerning ''fair valuation'' of their portfolio securities).

[8] *See* Whitney Dow, *Redemption Fees Surge 82% Since 1999: Assessment Periods Lengthen, While Fees Remain Constant,* Financial Research Corporation (June 2001) (available at *http://www.frcnet.com/research/articles/art_prc_fee.asp*) (stating that the number of funds that charge redemption fees nearly doubled from 2000 to March 2001). The Commission noted the use of redemption fees by funds in a 1966 report to Congress. *Report of the Securities and Exchange Commission on the Public Policy Implications of Investment Company Growth,* H.R. Rep. No. 89–2337, at 58, n.156 (1966) (''Redemption fees serve two purposes: (1) They tend to deter speculation in the fund's shares; and (2) they cover the fund's administrative costs in connection with the redemption.'').

[9] Funds often provide disclosures describing the redemption fee in footnotes to the fee table of the prospectus. *See* Item 3 of Form N–1A. We anticipate that funds will continue to do so under the proposed rule.

[10] Because funds are limited to the lesser of the actual costs of redemptions or two percent, and most funds that impose redemption fees charge a two percent fee, such funds must have redemption costs of at least two percent. *See infra* note 15.

The staff has stated that a redemption fee may recoup or offset the following expenses that are directly related to processing shareholder redemption requests: (i) Brokerage expenses incurred in connection with the liquidation of portfolio securities necessitated by the redemption; (ii) processing or other transaction costs incident to the redemption and not covered by any administrative fee; (iii) odd-lot premiums; (iv) transfer taxes; (v) administration fees; (vi) custodian fees; and (vii) registrar and transfer-agent fees. *See* Separate Accounts Funding Flexible Premium Variable Life Insurance Contracts, Investment Company Act Release No. 15651 (Mar. 30, 1987) [52 FR 11187 (April 8, 1987)] at text following n.74 (noting positions in SEC staff no-action letters).

[11] Many of the Act's prohibitions, such as the affiliated transaction provisions, apply to an ''affiliated person'' of a fund, which includes any person owning five percent or more of the outstanding voting securities of the fund. *See* section 2(a)(3) of the Act [15 U.S.C. 80a–2(a)(3)] (definition of ''affiliated person''); section 17 of the Act [15 U.S.C. 80a–17] (prohibiting an affiliated person of a fund, and an affiliated person of such a person, from engaging in the purchase or sale of assets with the fund). Therefore, the Act prevents large shareholders from taking advantage of the fund and its other shareholders.

[12] *See* sections 22(a) and (c) of the Act [15 U.S.C. 80a–22(a) and (c)] (authorizing Commission rules ''for the purpose of eliminating or reducing so far as reasonably practicable any dilution of the value of other outstanding securities of [a fund] or any other result of [a] purchase, redemption, or sale which is unfair to holders of such other outstanding securities * * *'').

[13] The proposed rule also applies to exchanges of securities issued by one fund for securities issued by another, because these transactions involve a redemption and purchase. *See* rule 11a–3 under the Act [17 CFR 270.11a–3] (regulating exchanges of fund securities, including the imposition of redemption fees). We also are proposing a conforming amendment to rule 11a–3.

[14] *See, e.g.,* Compliance Programs of Investment Companies and Investment Advisers, *supra* note, (adopting new rules requiring funds and advisers to adopt and implement policies and procedures designed to prevent violations of the federal securities laws, including policies to assure that the fund complies with existing obligations to establish fair value for securities in appropriate circumstances); *see also* Disclosure Regarding Market Timing and Selective Disclosure of Portfolio Holdings, *supra* note (proposing disclosure amendments concerning fund policies to detect and deter market timing activities).

[15] Although the two percent fee is designed to reimburse funds for the approximate costs associated with frequent trading, the fee itself would not be limited to particular costs associated with particular redemptions. *Cf.* John P. Reilly & Associates, SEC Staff No-Action Letter (July 12, 1979) (the staff would not recommend enforcement action if the redemption fee, subject to the at-cost standard, does not exceed two percent of the NAV of the redeemed shares); Separate Accounts Funding Flexible Premium Variable Life Insurance Contracts, *supra* note, at n. 74 (recognizing that staff informally has taken a position that a fund may impose a limited redemption fee to cover ''legitimate expenses that may be incurred to make the payment in cash to a redeeming shareholder''); *see also* section 10(d)(4) of the Act [15 U.S.C. 80a–10(d)(4)] (providing that a fund may have a board consisting of all interested persons of the fund, except one independent director, if, among other things, ''any premium over net asset value charged [by the fund] upon the issuance of any security, plus any discount from net asset value charged on redemption thereof, shall not in the aggregate exceed 2 per centum.'').

[16] *See infra* Section II.E. for a discussion of the exceptions in proposed rule 22c–2.

The two percent redemption fee would therefore be both mandatory and uniform. It is mandatory because it would apply to all fund shares, including shares held by financial intermediaries, which will prevent funds from creating exceptions for certain intermediaries, such as broker-dealers, banks, and retirement plans.[17] The uniformity of the two percent fee is designed to simplify the implementation of the rule and better enable intermediaries that hold shares in omnibus accounts to establish and maintain systems to collect these fees. Moreover, absent a mandatory and uniform redemption fee, small funds may feel competitive pressures not to impose redemption fees, which could impose costs on their long-term investors and attract market timers to their funds. This proposed rule would place all funds (unless excepted) on an equal footing with respect to charging redemption fees. The rule also would apply to short-term transfers among subaccounts within variable annuity contracts.[18]

The two percent fee is designed to strike a balance between two competing policy goals of the Commission—preserving the redeemability of mutual fund shares,[19] and reducing or eliminating the ability of shareholders who frequently trade their shares to profit at the expense of their fellow shareholders. It reflects the level of redemption fees that many funds today impose, and the maximum level our staff has long viewed as consistent with provisions of the Act that require mutual fund shares to be redeemable.[20] A higher fee could be more effective at stopping rapid trading,[21] but at a cost to ordinary investors who may be called upon to redeem to meet financial exigencies.

We request comment on the proposed mandatory redemption fee.

- Should the rule permit, rather than require, funds to charge a two percent redemption fee on the redemption of all securities held five days or less? If so, would funds have enough information to assess those fees on accounts held through financial intermediaries such as broker-dealers and banks?[22]
- Is two percent the appropriate level for the mandatory redemption fee? Should it be higher or lower?
- Available data indicate that active trading in fund shares imposes significant costs on mutual funds.[23] We request further data on the magnitude and types of costs that funds bear as a result of the active trading by a small percentage of shareholders.[24]
- Does the two percent level approximate the transactional costs that funds incur as a result of frequent trading?
- Should the rule permit funds to impose a higher or lower fee? Would greater flexibility make it more costly for financial intermediaries to determine the applicability and amount of the fee? How would a higher fee affect the ''redeemability'' of the shares?
- Should redemption fees in excess of two percent be allowed only for certain types of funds?
- Should funds be permitted to voluntarily impose a fee higher than two percent outside the mandatory redemption fee period discussed below?
- We recently proposed a new point-of-sale disclosure rule, and changes to the rule governing the mutual fund confirmation document provided to fund investors.[25] Should the mandatory redemption fee be disclosed as part of either or both of these proposals?

B. Five-Day Holding Period

The proposed rule would include a minimum five-day holding period before an investor could redeem its shares without triggering the two percent redemption fee. The rule would not preclude a fund from instituting a holding period longer than five days.[26] For example, funds that are particularly susceptible to abusive market timing activities may want to impose a longer

[17] According to the Investment Company Institute (''ICI''), 85 to 90 percent of mutual fund purchases are made through intermediaries. *See* Mutual Funds: Trading Practices and Abuses That Harm Investors, Testimony of Matthew Fink, President, ICI, before the Senate Subcommittee of Financial Management, the Budget and International Security, Committee on Government Affairs, 108th Cong., 1st Sess., 8 n.6 (Nov. 3, 2003) (available at *http://www.ici.org/statements/tmny.html*). A large portion of these fund investors invest through tax-advantaged retirement plans, such as 401(k) accounts. About one-third of all mutual fund shares are held through retirement accounts. *See* Investment Company Institute, *Mutual Funds and the U.S. Retirement Market in 2002,* Fundamentals, June 2003, at 1, 2.

[18] The ability to transfer assets among subaccounts on a tax-deferred basis makes variable annuities attractive to market timers. *See* Ian McDonald, *Mutual Fund Scrutiny Spreads to Annuities,* The Wall Street Journal, Nov. 7, 2003, at C1 (''[I]t is becoming clear that fund accounts that are part of the investment options for variable annuities also have been used by market timers to make profitable trades at the expense of long-term investors.''); Stephen Schurr, *Annuities: The Other Variable in Abusive Fund Trading,* TheStreet.com (Nov. 14, 2003) (available at *http://www.thestreet.com/_tscs/funds/stephenschurr/10125895.html*) (''[I]ndustry participants and watchers say a growing number of institutional clients have jumped in variable annuity contracts in recent years for market-timing purposes, because such contracts allow investors to move freely among funds on a tax-deferred basis.''). *See also* Karen L. Skidmore, *Handling Market Timer Issues in Variable Insurance Products Through Cooperative Arrangements Between Insurance Company and Mutual Fund Sponsors,* Practising Law Institute at 380 (2001) (''Market timing has also become a prevalent issue in the variable annuity industry where investors are permitted to make a certain number of transfers per year among different sub-accounts within the insurance company separate account, without generating a commission fee.'').

[19] During the legislative hearings on the Act, the Commission noted that ''the most important single attribute which induces purchases of the securities of open-end companies by the public is the so-called 'redemption feature' of such securities—that is, the assurance that the shareholder may tender his shares to the company and receive at once, or in a very short time, the approximate cash asset value of such shares as of the time of tender.'' Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. On Banking and Currency, 76th Cong., 3d Sess. at 985 (1940) (memorandum introduced by David Schenker, Chief Counsel, SEC Investment Trust Study).

[20] Section 2(a)(32) of the Act [15 U.S.C. 80a–2(a)(32)] defines the term ''redeemable security'' as a security that entitles the holder to receive approximately his proportionate share of the fund's net asset value. The Division of Investment Management informally took the position that a fund may impose a redemption fee of up to two percent to cover the administrative costs associated with redemption, ''but if that charge should exceed 2 percent, its shares may not be considered redeemable and it may not be able to hold itself out as a mutual fund.'' *See* John P. Reilly & Associates, SEC Staff No-Action Letter (July 12, 1979). This position is currently reflected in our rule 23c–3(b)(1) under the Act [17 CFR 270.23c–3(b)(1)], which permits a maximum two percent repurchase fee for interval funds and requires that the fee be reasonably intended to compensate the fund for expenses directly related to the repurchase of fund shares.

[21] See, *e.g.,* Letter from Steve Bartlett, The Financial Services Roundtable, to Paul F. Roye, Director, Division of Investment Management, SEC (Nov. 10, 2003); Letter from Geof Gradler, Senior Vice President and Head, Office of Government Affairs, Charles Schwab & Co., Inc., to Paul F. Roye, Director, Division of Investment Management, SEC (Oct. 27, 2003); Letter from David B. Yeske, President, The Financial Planning Association to William H. Donaldson, Chairman, SEC (Nov. 7, 2003). These letters are available in File No. S7–11–04.

[22] *See infra* Section II.D.

[23] *See* Roger M. Edelen, *Investor Flows and the Assessed Performance of Open-End Mutual Funds, supra* note 3 (estimating costs of the liquidity provided to investors by mutual funds).

[24] *See* Investment Company Institute, *Redemption Activity of Mutual Fund Owners,* Fundamentals, March 2001, at 1–3 (stating that the vast majority of fund shareholders do not frequently redeem their shares, and that a small percentage of shareholders account for the most active trading).

[25] *See* Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities, and Other Confirmation Requirement Amendments, and Amendments to the Registration Form of Mutual Funds, Investment Company Act Release No. 26341 (Jan. 29, 2004) [69 FR 6438 (Feb. 10, 2004)].

[26] Many funds that impose redemption fees require holding periods significantly longer than five days, typically ranging from 30 days to a year. For periods longer than five days, funds would continue to be limited to the lesser of the actual costs of redemptions or two percent. *See supra* note 15.

holding period.[27] A five-day holding period may be sufficient to deter much of the rapid trading activities we have seen, including those involving time-zone arbitrage, without imposing too heavy a burden on regular fund transactions.[28]

• Would a five-day holding period be sufficient to deter frequent trading, especially frequent trading due to abusive market timing?

• Should we prescribe a longer minimum holding period? Would there be less incentive to engage in abusive market timing if a longer holding period were imposed?[29] Would a shorter holding period be sufficient?

• Instead of only setting a *minimum* holding period, should the rule also set a *maximum* holding period for imposing any redemption fee?

• Would the flexibility the proposed rule gives to funds to determine the length of the holding period make it more difficult for financial intermediaries to determine the applicability of the fee?

• Should the rule contain a special provision addressing account transfers within the previous five days, *e.g.,* rollovers from a 401(k) plan to an Individual Retirement Account, to prevent the imposition of the redemption fee in those circumstances?

• Should the rule also apply to short-term transactions involving a redemption followed by a purchase within five days?

C. Smaller Investors

We are sensitive to the potential effect of the proposed rule on smaller investors who may redeem their shares shortly after they purchase them because of unanticipated personal financial circumstances. Therefore, we have included three provisions in the proposed rule that would diminish the effect of the redemption fee on the accounts of smaller investors.

First, funds would determine the amount of any fee by treating the shares held the longest time as being redeemed first, and shares held the shortest time as being redeemed last.[30] Also known as the ''first in, first out'' (''FIFO'') method, this is the method commonly employed by funds that charge redemption fees.[31] Use of the FIFO method would trigger redemption fees when large portions of an account are rapidly purchased and redeemed (a characteristic of abusive market timing transactions), but not when small portions of an account held over a longer period are redeemed.[32] Thus, most transactions normally made by most investors would not be subject to the fee.

• Would use of a LIFO method of determining the redemption fee be more effective in combating market timing transactions?[33] Would the answer turn on the amount of the *de minimis* exception, which we discuss below? Are there other methods of accounting for shares that are preferable?

Second, funds would be required to impose the redemption fee only on redemptions if the amount of the shares redeemed is greater than $2,500.[34] As a result, an investor could redeem shares without paying a fee if the fee would be $50 or less. We are proposing this threshold amount to allow the fund not to charge the fee for smaller redemptions that may not be disruptive to the fund, including redemptions of shares purchased during the previous five days through a dividend investment plan or some other automatic investment plan.[35] This approach permits a fund to perform its own cost-benefit analysis and determine whether the costs of collecting redemption fees in small amounts are worth the benefits.

This *de minimis* provision therefore would *permit,* but not *require,* funds to forego the assessment of a redemption fee if the amount of the shares redeemed is $2,500 or less. We also propose—as an alternative to this approach—that the rule *require* funds to forego the assessment of redemption fees if the amount of the shares redeemed is $2,500 or less.[36] This mandatory approach thus would prohibit funds from collecting these smaller redemption fees of $50 or less, under any circumstance. The uniformity of this approach across all funds may be advantageous for intermediaries who collect redemption fees on behalf of funds.

• Do these provisions sufficiently address the concerns of small investors?

• Do they sufficiently distinguish harmful rapid trading from occasional financial transactions that may involve a purchase of fund shares followed by a redemption?

• Conversely, would the thresholds permit a substantial amount of harmful rapid trading to occur?

• Many funds that currently impose redemption fees do not allow for any *de minimis* waivers of the fees to reimburse the fund for the costs of a relatively small number of shareholders that actively trade their shares.

• Would a mandatory *de minimis* exception serve to remove the reimbursement arrangements and protections against short-term trading that these funds have already established?

• Would a *de minimis* threshold of $2,500 limit the effectiveness of the rule in reimbursing the fund for the costs of rapid trading by smaller investors?

• Would the failure of the Commission to adopt a mandatory *de minimis* threshold allow funds to unfairly deny smaller shareholders the ability to actively trade their funds?

• Should the *de minimis* threshold be higher (*e.g.*, $5,000 or $10,000) or lower (*e.g.*, $2,000 or $1,000)?

• Should the *de minimis* threshold be mandatory at one level (*e.g.*, $2,500) and

[27] *See* Whitney Dow, *Redemption Fees Surge 82% Since 1999: Assessment Periods Lengthen, While Fees Remain Constant, supra* note 8 (study finding that, as of March 2001, the number of funds charging redemption fees increased 82% in the previous fifteen months, the size of the fee remained constant, and the length of the holding period increased from 7.5 months to 9.4 months).

[28] The vast majority of investors hold shares of their funds for more than five days. *See* Investment Company Institute, *Redemption Activity of Mutual Fund Owners, supra* note 24 at 2 (''vast majority of equity fund investors did not make a single redemption during the 12-month period ending January 1999'').

[29] *See* William Samuel Rocco, *Fighting Redemptions,* MORNINGSTAR.com (July 30, 2001) *(available at http://news.morningstar.com/doc/article/0,1,5086,00.html)* (Morningstar study found that a longer redemption fee holding period would make redemption fees more effective in deterring market timers during a market downturn: ''[I]nvestors are only subject to [redemption fees] if they redeem within a specified period, which is often fairly short * * * [which] suggests fund companies that are concerned about withdrawals during tough markets should consider redemption fees with longer holding periods.'').

[30] *See* proposed rule 22c–2(d).

[31] *See* NASD, Report of the Omnibus Account Task Force Members, Jan. 30, 2004, at 8 (''Omnibus Report'') (available in File No. S7–11–04).

[32] The application of the FIFO method also has the advantage of eliminating the need to include in the rule exceptions for numerous types of transactions in shareholder accounts that might regularly result if we used the last in, first out (''LIFO'') method, but which do not bear the characteristics of market timing transactions. These transactions include redemptions subsequent to purchases pursuant to dividend reinvestment plans, automatic purchase plans, and automatic account rebalancing arrangements. The $2,500 *de minimis* provision discussed below would prevent the application of the redemption fee when a redemption of all shares (including the most recently purchased shares) occurs shortly after a purchase of such shares as a result of one of these arrangements.

[33] Investors could use multiple accounts to circumvent a redemption fee based on a LIFO method of accounting for the holding of shares. Therefore, use of such an approach might require intermediaries to transmit the account holder's taxpayer identification number (''TIN'') and require the fund to match transactions with the same TIN to determine the applicability of the redemption fee.

[34] *See* proposed rule 22c–2(e)(1)(i).

[35] The exception also is designed to allow funds to avoid the administrative cost of imposing a redemption fee when the costs of collecting the fee may outweigh the amount of the fee itself.

[36] If we were to adopt this alternative approach, paragraph (e)(1) of the proposed rule would be revised accordingly.

voluntary up to another level (*e.g.*, $10,000)?

Third, the rule would provide for the waiver of redemption fees in the case of an unanticipated financial emergency, upon written request of the shareholder.[37] The fund would be *required* to waive the fee on redemptions of $10,000 or less. The fund also would be *permitted* to waive the fee on redemptions greater than $10,000 in these emergency circumstances. This exception is designed to permit shareholders access to their investment when they need to meet unforeseen financial demands, such as payment for emergency surgery, soon after they purchased their shares. We request comment on this exception.

- Should this exception be mandatory rather than discretionary, on the part of the fund, regardless of the amount of the shares redeemed?
- Should the rule define the circumstances that would constitute an unanticipated financial emergency?[38]
- If so, what should those circumstances include? Should they include, for example, (i) death, disability, or other specific personal emergencies, (ii) personal economic hardship or unanticipated changes in personal circumstances, or (iii) emergencies such as market breaks or major political or economic events?
- What are the likely costs to funds of administering the financial emergency exception?
- Should the rule limit the number of emergency waivers that a shareholder may request, or that a fund may grant?
- Should funds be permitted to waive the redemption fee in other circumstances, such as purchases made in error, or purchases within the five-day period due to automatic investment or reinvestment programs?

D. Shareholder Accounts and Intermediaries

Many investors' holdings in mutual funds are through accounts held by broker-dealers, banks, insurance companies, and retirement plan administrators. Many of these holdings are on the books of the fund (or its transfer agent) in the name of the intermediary, rather than in the name of the fund shareholder. Intermediaries controlling these so-called ''omnibus accounts'' often provide the fund with insufficient information for the fund to apply redemption fees. Indeed, today many funds choose not to apply redemption fees, or their policies against market timing, to shares held through these omnibus accounts. A number of the market timing abuses identified through our examinations and investigations reveal that certain shareholders were concealing abusive market timing trades through omnibus accounts.[39] As a result, those shareholders have often been beyond the reach of fund directors' efforts to protect the fund and its shareholders from the harmful effects of short-term trading.[40]

Last year, to address this serious and growing problem, Chairman Donaldson requested that the NASD convene a panel of experts from the brokerage, money management and retirement plan communities to create greater transparency of shareholder account activities.[41] Its findings have been very useful to us in fashioning provisions of today's proposal on redemption fees.

Proposed rule 22c–2 would give the fund and financial intermediaries through which investors purchase and redeem shares three methods of assuring that the appropriate redemption fees are imposed.[42] Each fund would be able to select the method(s) to use. Under the first method, the fund intermediary must transmit to the fund (or its transfer agent) at the time of the transaction the account number used by the intermediary to identify the transaction.[43] This information will permit the fund to match the current transaction with previous transactions by the same account and assess the redemption fee when it is applicable.

Under the second method, the intermediary would enter into an agreement with the fund requiring the intermediary to identify redemptions of account holders that would trigger the application of the redemption fee, and transmit holdings and transaction information to the fund (or its transfer agent) sufficient to allow the fund to assess the amount of the redemption fee.[44] Under this approach, the intermediary would be required to submit substantially less data along with each transaction than under the first method.

Under the third method, the fund would enter into an agreement with a financial intermediary requiring the intermediary to impose the redemption fees and remit the proceeds to the fund.[45] This approach would require the intermediary to determine which transactions are subject to the fee, and assess the fee. This method would alleviate the burden on intermediaries to transmit shareholder account and transactional information to the funds on a transaction-by-transaction basis.[46]

Regardless of which of the three methods described above are used to collect the redemption fee, the proposed rule also would require that, on at least a weekly basis, the financial intermediary provide to the fund the Taxpayer Identification Number (''TIN''), and the amount and dates of all purchases, redemptions, or exchanges for each shareholder within an omnibus account during the previous week.[47] This information is designed to enable the fund to confirm that fund intermediaries are properly assessing the redemption fees.[48] It also would

[37] *See* proposed rule 22c–2(e)(1)(ii).

[38] *See, e.g.*, 26 CFR 1.457–6(c)(2)(i) (2003) (''An unforeseeable emergency must be defined in the plan as a severe financial hardship of the participant or beneficiary resulting from an illness or accident of the participant or beneficiary, the participant's or beneficiary's spouse, or the participant's or beneficiary's property due to casualty * * * or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or the beneficiary * * *'').

[39] *See, e.g.*, SEC v. Security Trust Company, *et al.*, Civil Action No. 03–2323 (D. Ariz. Nov. 24, 2003) (alleging that Security Trust Company (''STC''), an unregistered financial intermediary, in an attempt to conceal a hedge fund's market timing activities from mutual funds, opened five omnibus accounts for the hedge fund through which the hedge fund's trades were rotated to evade detection by the mutual funds. STC also allegedly opened mirror accounts for the five omnibus accounts using STC's taxpayer identification number, which approach was intended to impede efforts by mutual fund companies to detect market timers by their tax identification numbers).

[40] The state civil complaint in New York v. Canary Capital Partners, LLC, Canary Investment Management, *et al.*, (N.Y.S. Ct. filed Sept. 3, 2003) at para. 46, illustrates this practice: ''Timers * * * trade through brokers or other intermediaries * * * who process large numbers of mutual fund trades every day through omnibus accounts where trades are submitted to mutual fund companies *en masse*. The timer hopes that his activity will not be noticed among the 'noise' of the omnibus account.''

[41] *See* Letter from William H. Donaldson, Chairman, SEC, to Mary L. Schapiro, Vice Chairman and President, NASD (Nov. 17, 2003). This letter is available in File No. S7–11–04.

[42] *See* proposed rule 22c–2(b).

[43] *See* proposed rule 22c–2(b)(1).

[44] *See* proposed rule 22c–2(b)(2).

[45] *See* proposed rule 22c–2(b)(3). The Omnibus Account Task Force found this method to be the most viable approach. *See* Omnibus Report, *supra* note 31, at 2.

[46] Under the second and third methods, funds would be responsible for ensuring that intermediaries are properly determining the fee, or assessing it.

[47] *See* proposed rule 22c–2(c). This proposed approach was recommended by the Omnibus Account Task Force. *See* Omnibus Report, *supra* note , at 7. *See also, e.g.*, Letter from Niels Holch, Executive Director, Coalition of Mutual Fund Investors, to William H. Donaldson, Chairman, SEC (Dec. 12, 2003) (available in File No. S7–11–04). A fund that receives this information pursuant to the proposed rule would not be able to use the information for its own marketing purposes, unless permitted under the intermediary's privacy policies. *See* sections 248.11(a) and 248.15(a)(7)(i) of Regulation S–P [17 CFR 248.11(a) and 248.15(a)(7)(i)].

[48] *See, e.g.*, Jonas Max Ferris, *Next Scandal: Brokers?, The Street.com, Nov. 26, 2003,* (available

permit funds to detect market timers who a fund has prohibited from purchasing fund shares and who attempt to enter the fund through a different account. In addition, this may in some cases be helpful to funds that would be able to use the information to determine whether shareholders received appropriate breakpoint discounts on purchases of fund shares sold with a front-end sales load.[49]

• Would the account information provided by the intermediaries to the funds be sufficient for the funds to properly assess the fees?

• Should financial intermediaries provide shareholder identity and transaction information to the fund or its transfer agent more (or less) frequently than weekly?

• Should the rule limit the number of ways that redemption fees may be assessed, in order to promote greater uniformity in the enforcement of redemption fees across funds and their intermediaries?

• Should the rule require funds to match shareholder purchases and redemptions that occur through multiple accounts or intermediaries?

• With respect to foreign shareholders, who do not have a TIN, what alternative shareholder identity information should financial intermediaries send to funds?

• Should we require that funds retain their agreements with the financial intermediaries as part of their recordkeeping obligations?

• Are there additional ways to identify market timing trades that are executed through the use of multiple accounts, multiple customer account numbers, intermediaries, or any other means designed to evade detection?

• We also request comment on the administrative and legal issues that insurance companies and their underlying funds would face as a result of this rule.[50]

E. Exceptions

Proposed rule 22c–2 would include four exceptions to the mandatory redemption fee.[51] First, as discussed above,[52] the rule would not require funds to collect redemption fees on redemptions of $2,500 or less, and would provide for fee waivers in the case of financial emergencies.[53] Second, the rule would except money market funds from its scope.[54] Money market funds seek to obtain a stable net asset value of one dollar per share, and often are used for short-term investments. They are therefore designed to accommodate frequent purchases and redemptions, and do not appear to be susceptible to the harms caused by excessive trading; in fact, they are designed to facilitate frequent trading.

Third, the rule would not apply to exchange-traded funds (''ETFs'').[55] Shares issued by ETFs are listed on stock exchanges and, like the shares of other listed operating companies, trade at negotiated prices on securities exchanges. An ETF redeems shares or units in large blocks, or ''creation units,'' and redemptions of these units serve to correct the price of individual shares on the secondary market.[56] These redemptions therefore are unlikely to pose risks of harm to the fund.[57]

Finally, proposed rule 22c–2 would not apply to any fund that (i) adopts a fundamental policy to affirmatively permit short-term trading in all of its redeemable securities,[58] and (ii) discloses in its prospectus that it permits short-term trading of its shares and that such trading may result in additional costs for the fund.[59] This exception is designed to permit funds and investors the freedom to invest in funds that affirmatively disclose their intent to allow short-term trading. Some short-term traders find these types of funds to be attractive vehicles. We are reluctant to propose a rule that would prohibit such funds and investors from achieving their objectives by requiring the funds to impose a redemption fee.

• Should other types of funds also be excepted from the rule?

F. Request for Further Comment on Rule 22c–2

The proposed mandatory redemption fee is designed to work together with our other regulatory initiatives and with tools fund managers already have at their disposal to curb harmful market timing transactions.[60] Fund managers can use information they receive about transactions in omnibus accounts to take steps to better enforce market timing policies, including barring market timers from the fund. Tighter controls on information about portfolio holdings will make successful market timing transactions more difficult.[61] While a mandatory redemption fee would reduce the profitability of abusive market timing trades, standing

at *http://www.thestreet.com/_tscs/jonasmaxferris/10128667.html*) (''Could a discount broker ''forget'' to collect a fund's short-term redemption fee as stated in the fund's prospectus? ''Omnibus accounting offers interesting ways to cloak illicit trades from a fund, including matching retail buys and sells against big-money accounts taking the opposite trade at opportune times.''). In addition, more than one individual may trade through a particular account, in which case more than one TIN may be associated with the account. Providing this TIN information to the fund may enable the fund to determine whether a redemption fee should be charged on a redemption in that account.

[49] *See* Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26298 (Dec. 17, 2003) [68 FR 74732 (Dec. 24, 2003)] (proposed amendments to Form N–1A to require that funds disclose sales load breakpoint discount arrangements and methods for calculating discounts, based on recommendations of Joint NASD/Industry Task Force on Breakpoints and results of a joint examination sweep by the Commission, NASD, and NYSE of broker-dealers revealing that most firms in some instances did not provide investors with breakpoint discounts for which they appeared to have been eligible).

[50] *See* Letter from Stephen E. Roth and W. Thomas Conner, Sutherland, Asbill & Brennan LLP, to Paul F. Roye, Director, Division of Investment Management, SEC (Feb. 10, 2004). This letter is available in File No. S7–11–04.

[51] *See* proposed rule 22c–2(e). The rule would not permit funds to exclude other types of funds or redemptions during the five-day holding period. (Funds that establish longer holding periods, however, would be free to provide exceptions from redemption fees imposed on shares held longer than five days.) Thus, a fund could not waive redemption fees for some investors (*e.g.,* favored institutional clients, fund employees, or fund directors) but apply them to others. *See* Testimony of Don Phillips, Managing Director, Morningstar Inc., on ''Mutual Funds: Who's Looking Out for Investors,'' Before the House Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises of the Committee on Financial Services, 108th Cong., 1st Sess. (Nov. 4, 2003) (*available at http://news.morningstar.com/doc/article/0,1,99258,00.html*) (''From our conversations with fund managers, it is clear that they believe that redemption fees are the best deterrent to market timers. Of course, a fee is only effective if it is enforced. We think that funds must be much less lax in waiving fees for bigger accounts or for 401(k) plans, and that directors should be informed when and under what conditions these fees may be waived.'').

[52] *See supra* Section II.C.

[53] *See* proposed rule 22c–2(e)(1).

[54] *See* proposed rule 22c–2(e)(2)(i).

[55] *See* proposed rule 22c–2(e)(2)(ii).

[56] *See* Actively Managed Exchange-Traded Funds, Investment Company Act Release No. 25258, at nn. 6–8 and accompanying text (Nov. 8, 2001) [66 FR 57614 (Nov. 15, 2001)].

[57] In addition, redeeming shareholders generally pay transaction fees to the ETF to cover the costs associated with redemptions. *See* Gary L. Gastineau, The Exchange-Traded Funds Manual (2002).

[58] A *fundamental* policy can be changed only by a majority vote of the outstanding voting securities of the fund. *See* section 8(b) of the Act [15 U.S.C. 80a–8(b)].

[59] *See* proposed rule 22c–2(e)(2)(iii).

[60] *See supra* note 7 and accompanying text.

[61] *See* Compliance Programs of Investment Companies and Investment Advisers, *supra* note 6, at nn. 54–56 and accompanying text (a fund's compliance policies and procedures should address potential misuses of nonpublic information, including the disclosure to third parties of material information about the fund's portfolio); *see also* Disclosure Regarding Market Timing and Selective Disclosure of Portfolio Holdings, *supra* note 7, at nn. 52–67 and accompanying text (proposal to require open-end management investment companies and insurance company managed separate accounts that offer variable annuities to disclose their policies and procedures with respect to the disclosure of their portfolio securities, and any ongoing arrangements to make available information about their portfolio securities).

alone it would be unlikely to deter abusive market timing transactions in which the profits are expected to exceed the fee, or that do not involve short-term transactions.[62]

A significant proportion of abusive market timing has been designed to exploit systematic pricing discrepancies between the value assigned to a fund's portfolio securities for purposes of calculating the fund's net asset value and the ''fair value'' of those portfolio securities. We believe that the use of fair value pricing, as required by the Act,[63] can reduce or eliminate the arbitrage opportunities that these market timers seek, and that the primary response of funds and fund managers must, therefore, be to more accurately calculate the daily net asset value of the fund by using fair value pricing methods when closing prices are unreliable.[64]

Recent experience has shown, however, that the requirement to implement fair value pricing has not always been sufficient to eliminate these arbitrage opportunities. One possible reason is that fair value pricing involves subjective judgments that leave open the possibility of market timing, albeit at reduced profits.[65] Another possibility is that some funds have applied fair value pricing inconsistently, or only to the most egregious pricing discrepancies. While a mandatory redemption fee may reduce, or eliminate, arbitrage profit opportunities, we are also actively considering ways in which the implementation of fair value pricing could be improved.

Our examination staff is in the process of gathering information about funds' current fair value pricing practices, and we have directed the staff of the Division of Investment Management to examine the fair value pricing methodologies used by the funds and the quality of pricing those methodologies yield, for purposes of evaluating whether there are additional measures that we could take to improve funds' fair value pricing. In connection with our consideration of these issues, we will be seeking additional comment on specific issues related to fair value pricing.[66] However, at this time we ask commenters to address generally fair value pricing as it relates to abusive market timing. What areas of uncertainty do funds face when trying to fair value their portfolio securities? Are there areas of uncertainty that could be resolved with further guidance from us? If funds implement fair value pricing effectively, is a mandatory redemption fee unnecessary to address abusive market timing?[67]

After reviewing all information, we will consider whether to issue additional interpretive guidance or undertake further rulemaking with respect to fair value pricing. Those additional comments and information will be relevant to our decision whether a mandatory redemption fee is necessary or appropriate to deter abusive market timing.

We request comment on whether there are additional tools that the Commission should consider to combat harmful market timing transactions.

- Should the Commission require that funds determine the value of purchase and redemption orders at the net asset value calculated the *next* day after it receives those orders, rather than at the time that the fund next calculates its NAV? Under such an approach, market timers would not be able to predict whether the next day's NAV would be higher or lower and, therefore, would not be able to trade profitably. On the other hand, such an approach would diminish ordinary investors' ability to promptly effect their mutual fund investment decisions.
- Are there other means to discourage abusive market timing that we should consider?

III. General Request for Comment

The Commission requests comment on proposed rule 22c–2, suggestions for additions to the proposed rule, and comment on other matters that might have an effect on the proposal contained in this Release. We note that comments are more helpful if they include supporting data and analysis.

IV. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. As discussed above, proposed rule 22c–2 would require that funds impose a two percent redemption fee on the redemption of fund shares within five days of purchase.

A. Benefits

We anticipate that funds and shareholders would benefit from the proposed rule. The rule is designed to reimburse a fund for the costs of short-term trading in fund shares. Short-term trading can raise transaction costs for the fund, disrupt the fund's stated portfolio management strategy, require maintenance of an elevated cash position, and result in lost investment opportunities and forced liquidations. Short-term trading also can result in unwanted taxable capital gains for fund shareholders and reduce the fund's long-term performance. Excessive trading also can dilute the value of fund shares held by long-term shareholders if a short-term trader, or ''market timer,'' buys and sells shares rapidly to take advantage of market inefficiencies when the price of a mutual fund does not reflect the current market value of the stocks held by that mutual fund. Dilution could occur if fund shares are overpriced and short-term traders receive proceeds based on the overvalued shares. Although short-term traders can profit from engaging in frequent trading of fund shares, the costs associated with such trading are borne by all fund shareholders.

To the extent that the rule discourages short-term trading, long-term investors

[62] *See* Conrad S. Ciccotello, Roger M. Edelen, Jason T. Greene and Charles W. Hodges, *Trading at Stale Prices and Modern Technology: Policy Options for Mutual Funds in the Internet Age,* 7 VA J.L. & Tech. 6, at nn. 141–144 and accompanying text (''Redemption fees can be quite effective in reducing stale price trading.'' However, ''redemption fees cannot address the problems caused by large market moves. For example, in the 1997 Asian Crisis, a fourteen-percent overnight return was available based on the Hong Kong market. At that point, even a two-percent redemption fee would not deter stale price traders.'').

[63] The Investment Company Act requires funds to calculate their net asset values using the market value of portfolio securities when market quotations are readily available. Section 2(a)(41) [15 U.S.C. 80a–2(a)(41)] of the Investment Company Act and rule 2a–4 [17 CFR 270.2a–4]. If a market quotation for a portfolio security is not readily available (or is unreliable), the fund must establish a ''fair value'' for that security, as determined in good faith by the fund's board. *See* Pricing of Redeemable Securities for Distribution, Redemption, and Repurchase, Investment Company Act Release No. 14244 (Nov. 21, 1984) [49 FR 46558 (Nov. 27, 1984)] at n. 7 (proposing amendments to rule 22c–1).

[64] Fair value pricing takes after-market-close events into account in determining the fund's daily net asset value. In a release recently adopting rule 38a–1, we reiterated the obligation of funds to fair value their securities under certain circumstances to reduce market timing arbitrage opportunities and to have procedures to meet these obligations. *See* Compliance Programs of Investment Companies and Investment Advisers, *supra* note 6.

[65] *See* Frederick C. Dunbar and Chudozie Okongwu, (*Market) Timing is (Not) Everything,* Wallstreetlawyer.com, Oct. 2003, (''There are many possible ways to adjust pricing. The goal is to adjust the stale prices of the securities held by a fund by the predicted effect of the information that becomes known between each security's last trade and the pricing of the fund. However, such adjustments are costly to produce and inexact at best.'').

[66] Such a request for comment could include, for example, whether we should adopt a rule requiring funds to regularly review the appropriateness and accuracy of methods used in valuing securities. Currently such a practice must be a part of a fund's compliance policies and procedures. *See* Compliance Policies and Programs of Investment Companies and Investment Advisers, *supra* note 14 at Section II.A. In addition, we could request comment on whether we should adopt a rule clarifying when a fund must re-calculate its net asset value when it has re-priced portfolio securities.

[67] We recognize, however, that a redemption fee may nonetheless be necessary to address the costs of short-term trading discussed previously.

may have more confidence in the financial markets as a whole, and funds in particular. Funds would benefit by the increase in investor confidence because long-term investors would be less likely to seek alternative financial products in which to invest. Because the fund retains the redemption fee, long-term shareholders are essentially reimbursed for some, if not all, of the redemption costs caused by the short-term traders.

B. Costs

Currently, some funds already impose redemption fees on redemptions made within a specified period of time, often thirty days to a year. The proposed rule would likely result in minimal costs for those funds. With respect to funds that do not currently impose redemption fees, the proposed requirement of a mandatory two percent redemption fee also would likely result in a minimal burden.

With respect to omnibus accounts, we recognize that the proposed rule, if adopted, may result in costs for funds and their intermediaries. The costs to a fund's transfer agent to store the shareholder information and track the trading activity may be significant, and those costs may ultimately be passed on to investors.[68] In some cases, the transfer agent will have to upgrade its recordkeeping systems; however, some transfer agents may have software that can be used, or modestly modified, to accommodate the matching of purchases and redemptions. In addition, with respect to funds and their transfer agents, the costs of storing the data will be mitigated because the proceeds of the two percent redemption fee will be retained by the funds for the benefit of their long-term shareholders. We seek comments on these costs, and whether they are justified by the benefits of the proposed rule.

We also recognize that the proposed rule, if adopted, may impose some costs on financial intermediaries that will have to upgrade their software or other technology because their systems currently may not be able to either transmit the shareholder data or track trading patterns of individual accountholders.[69] If financial intermediaries, such as retirement plan administrators, find it too expensive to upgrade their systems, potential investors may end up investing in alternative financial products. In some cases, however, the costs may be substantially less for broker-dealers and other intermediaries that already have transfer agent systems in place that can be modified to identify short-term trading.[70] We seek comments on these costs, and whether they are justified by the benefits of the proposed rule.

With respect to the method of determining which shares are subject to the redemption fees, we considered the benefits and costs associated with adopting a LIFO method compared to a FIFO approach, the current method used by most funds to impose redemption fees. We understand that the LIFO method may entail substantially greater costs than FIFO. Moreover, unlike FIFO, the use of LIFO may warrant the exclusion of certain transactions, such as investments made through a periodic purchase plan. Thus, the use of LIFO may add a level of complexity to the administration of the redemption fee, particularly in omnibus accounts, which could result in additional costs.

C. Request for Comment

The Commission requests comment on the potential costs and benefits of the proposed rule. We also request comment on the potential costs and benefits of any alternatives suggested by commenters. We encourage commenters to identify, discuss, analyze, and supply relevant data regarding any additional costs and benefits. For purposes of the Small Business Regulatory Enforcement Act of 1996,[71] the Commission also requests information regarding the potential annual effect of the proposals on the U.S. economy. Commenters are requested to provide empirical data to support their views.

V. Paperwork Reduction Act

Certain provisions of proposed rule 22c–2 would result in new ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[72] The Commission is submitting this proposal to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information requirements is ''Rule 22c–2 under the Investment Company Act of 1940, 'Redemption fees for redeemable securities.' '' An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

A. Omnibus Accounts

As discussed above, we are proposing rule 22c–2 to require a mandatory two percent redemption fee to be applied on all redemptions of fund shares held five business days or less, subject to certain narrow exceptions. To ensure that the redemption fees are applied uniformly, fund shares held by financial intermediaries in omnibus accounts must be subject to the fee.

The rule would provide three methods by which a fund could assess and collect the redemption fees on shares held through omnibus accounts. The fund could direct the financial intermediary to: (i) Provide the fund, upon submission of each purchase and redemption order, the account number used by the financial intermediary to identify the shareholder (paragraph (b)(1)); (ii) provide the fund, as to redemption orders upon which the fund must charge a redemption fee, transaction and holdings information sufficient to permit the fund to assess the amount of the redemption fee (paragraph (b)(2)); or (iii) assess the redemption fee and remit the fee to the fund (paragraph (b)(3)). In addition, regardless of the approach selected above, at least once weekly, the fund must receive from the financial intermediary the TIN of all shareholders that purchased or redeemed shares held in omnibus accounts, and the amount and dates of such shareholder purchases and redemptions (paragraph (c)).

The Commission staff estimates that there are currently 3,100 active registered open-end investment companies and that each fund (or its transfer agent) would be required to collect redemption fees on transactions in omnibus accounts. We also estimate that about (i) 15 percent of all funds would receive information from intermediaries according to the approach set forth in paragraph (b)(1), (ii) 35 percent of all funds would receive information from intermediaries according to the approach set forth in paragraph (b)(2), and (iii) 50 percent of all funds would arrange for intermediaries to assess the redemption fees, pursuant to paragraph (b)(3). These collection of information requirements

[68] Many funds already pay the intermediaries who sell their funds for the recordkeeping they perform for omnibus accounts.

[69] *See, e.g.,* Letter from Edward L. Yingling, American Bankers Association, to Paul F. Roye, Director, Division of Investment Management, SEC (November 12, 2003) (available File S7–11–04). The American Bankers Association noted that redemption fees would increase 401(k) plan costs: the ''need to set accounting processes for those accounts and to administer the movement of [redemption] fees will raise additional costs to plan participants.''

[70] Broker-dealers using National Securities Clearing Corporation already transmit TINs to fund transfer agents for certain types of ''networking'' arrangements. *See* Omnibus Report, *supra* note 31, at 4, n. 6.

[71] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[72] 44 U.S.C. 3501–3520.

would be mandatory because a fund must receive the above information from the financial intermediary to ensure that redemption fees are properly assessed in omnibus accounts.

Regardless of the approach selected, we anticipate that all funds would have to modify their agreements or contracts with their intermediaries. This modification would create a one-time burden of 4.5 hours per fund (4 hours by in-house counsel, .5 hours by support staff) [73] for a total burden of 13,950 hours.[74]

1. Funds: Paragraph (b)(1)

As noted above, 15 percent of all funds (*i.e.*, 465 funds) are expected to select the option set forth in paragraph (b)(1). The Commission staff estimates, based on information provided by funds, that the one-time burden on a fund to develop or upgrade its systems for the storage of information received from intermediaries, evaluate transactional data to match purchases and redemptions within a shareholder's account, and assess redemption fees would be 300 burden hours, for an aggregate burden of 139,500 hours for all funds.[75] We estimate the start-up costs required to store and process information necessary to assess redemption fees to be $560,000 per fund, for an aggregate cost of $260,400,000 for all funds.[76]

In addition, funds also would have an ongoing burden to operate and maintain systems to store and process information necessary to impose redemption fees in omnibus accounts. Based on information provided by funds, we estimate this burden to be 300 hours annually per fund, for an aggregate burden of 139,500 hours.[77] The operation and maintenance costs would be $6,640 per fund, for an aggregate cost of $3,087,600 for all funds.[78]

2. Funds: Paragraph (b)(2)

As noted above, 35 percent of all funds (*i.e.*, 1,085 funds) are expected to select the option set forth in paragraph (b)(2). Under paragraph (b)(2) of the rule, the Commission staff estimates, based on information provided by funds, that the one-time burden on funds to develop or upgrade their systems for the storage of information received from intermediaries, evaluate transactional data to match purchases and redemptions within a shareholder's account, and assess redemption fees would be 300 burden hours per fund, for an aggregate burden of 325,500 hours for all funds.[79]

We estimate the start-up costs required to store and process information necessary to assess redemption fees to be $560,000 per fund, for an aggregate cost of $607,600,000 for all funds.[80] We estimate the annual ongoing operation and maintenance costs would be $6,640 for an aggregate cost of $7,204,400 for all funds.[81] We estimate the ongoing collection of information burden on funds to be 300 hours per fund, for an aggregate burden of 325,500 hours.[82] The operation and maintenance costs would be $6,640 per fund for an aggregate cost of $7,204,400 for all funds.[83]

3. Funds: Paragraph (b)(3)

As noted above, 50 percent of all funds (*i.e.*, 1,550 funds) are expected to select the option set forth in paragraph (b)(3). Under paragraph (b)(3), the fund and intermediary would enter into an agreement whereby the intermediary itself would assess the fee. Under this approach, funds would not receive any shareholder data from intermediaries. Therefore, there would be no collection of information requirements for funds.

4. Intermediaries: Paragraphs (b)(1)–(3)

The Commission staff estimates that there are currently approximately 6,800 financial intermediaries (2,203 broker-dealers classified as specialists in fund shares, 2,400 banks,[84] 196 insurance companies sponsoring registered separate accounts organized as unit investment trusts, and approximately 2,000 retirement plan administrators) that would be required to transmit certain transactional and periodic information to the fund as outlined in Section II.D. For the purpose of these estimates, with respect to the transaction information under paragraph (b), we have assumed that about 15 percent of intermediaries would supply the transactional information to the fund pursuant to paragraphs (b)(1), 35 percent of intermediaries would supply the transactional information pursuant to paragraph (b)(2) of the proposed rule, and about half of the intermediaries themselves would assess the redemption fee pursuant to paragraph (b)(3) of the rule.

Under paragraph (b)(1), the Commission staff estimates that the one-time capital cost to financial intermediaries to develop or upgrade their software or other technological systems to collect, and store the required transactional information to be $100,000 per intermediary for an aggregate cost of $102,000,000 for all intermediaries.[85] The Commission staff also anticipates an ongoing burden for financial intermediaries to comply with the transactional information requirements set forth in the rule. We estimate the annual burden to be 240 hours for an aggregate burden of 244,800 hours.[86] The operation and maintenance costs would be $100,000 per intermediary for a total cost of $102,000,000 for all intermediaries.[87]

Under paragraph (b)(2), the Commission staff estimates that the one-time capital cost to financial intermediaries to develop or upgrade their software or other technological systems to collect, and store the required transactional information to be $10,000 per intermediary for an aggregate cost of $23,800,000 for all intermediaries.[88] The Commission staff also anticipates an ongoing burden for financial intermediaries to comply with the transactional information requirements set forth in the rule. We estimate the annual burden to be 24 hours per intermediary for an aggregate burden of 57,120 hours.[89] The operation and maintenance costs would be $10,000 per intermediary for a total cost of $23,800,000 for all intermediaries.[90]

[73] These estimates are based on discussions with fund representatives.

[74] (3,100 funds × 4.5 hours = 13,950 hours).

[75] (300 hours × 465 funds = 139,500 hours).

[76] ($560,000 per fund cost × 465 funds = $260,400,000).

[77] (300 hours × 465 funds = 139,500 hours).

[78] ($6,640 per fund × 465 funds = $3,087,600).

[79] (300 hours × 1,085 funds = 325,500 hours).

[80] ($560,000 per fund × 1,085 funds = $607,600,000).

[81] ($6,640 per fund × 1,085 funds = $7,204,400).

[82] (300 hours × 1,085 funds = 325,500 hours).

[83] ($6,640 per fund × 1,085 funds = $7,204,400).

[84] The Commission staff estimates that for the quarter ending September 30, 2003, about 2,400 banks reported to the Federal Financial Institutions Examination Council (on their Reports of Condition and Income) that they sell private label or third party mutual fund shares or variable annuity contracts (''annuities''). Unregistered annuities would not be subject to proposed rule 22c–2. This number may be an over-estimate of the number of banks that would be affected by the proposed rule because some of these banks may only sell annuities not required to register under the Investment Company Act of 1940. The number of banks selling funds or annuities may also count some banks selling on the banks' premises through registered broker-dealers. These banks have already been counted in the estimate of the number of broker-dealer respondents.

[85] ($100,000 per intermediary × 1,020 intermediaries = $102,000,000).

[86] (240 hours per intermediary × 1,020 intermediaries = 244,800 hours).

[87] ($100,000 per intermediary × 1,020 intermediaries = $102,000,000).

[88] ($10,000 per intermediary × 2,380 intermediaries = $23,800,000).

[89] (24 hours per intermediary × 2,380 intermediaries = 57,120 hours).

[90] ($10,000 per intermediary × 2,380 intermediaries = $23,800,000).

Under the approach set forth in paragraph (b)(3) of the proposed rule, there would be no collection of information requirements on intermediaries.

5. Funds and Intermediaries: Paragraph (c)

With respect to the periodic information, including the TIN of the shareholder, to be provided on at least a weekly basis as set forth in paragraph (c) of the proposed rule, we estimate that there would be a burden on funds to collect and evaluate the data, and intermediaries to transmit it. However, that burden is reduced because we are requiring the data to be provided on at least a weekly basis, rather than on a transaction-by-transaction basis. We estimate the annual burden on a fund to be 2,080 hours [91] for a total burden of 6,448,000 hours for all funds.[92] We estimate the capital costs to be $100,000 per fund for an aggregate cost of $310,000,000 for all funds,[93] and the ongoing yearly cost to be $20,584,000.[94] We estimate the annual burden to be 240 hours per intermediary for a total burden of 1,632,000 hours for all financial intermediaries.[95] We estimate the capital costs to be $150,000 per intermediary for an aggregate cost of $1,020,000,000,[96] and an ongoing cost to be $100,000 per intermediary for an aggregate yearly cost of $680,000,000 for all intermediaries.[97]

B. Emergency Exception

The proposed rule also would contain an exception that would permit a shareholder, in case of an unanticipated financial emergency, to make a written request to the fund to waive the redemption fee if the amount of the shares redeemed is $10,000 or less. We estimate that each fund would receive approximately ten waiver requests on an annual basis. Therefore, the aggregate number of requests would be 31,000.[98] We estimate that it will take each shareholder 10 minutes to prepare a waiver, with an aggregate burden on shareholders of 5,167 hours.[99]

C. Aggregate Hours and Cost Burdens

To arrive at the total information collection burden for all 9,900 respondents (*i.e.*, 3,100 funds + 6,800 intermediaries) under the proposed amendments to rule 22c–2, an average of the first year burden and the subsequent annual burdens must be calculated. Over the three-year period for which we are seeking approval, the weighted average aggregate annual information collection burden would be 8,856,737 hours.[100] The Commission estimates that there will be a total of 155,592,600 responses annually, which includes responses by funds, intermediaries, and fund shareholders.[101]

To arrive at the total annual cost of the new information collection requirements for all 9,900 respondents (*i.e.*, 3,100 funds + 6,800 intermediaries), an average of the first year cost and the subsequent annual costs must be calculated. Over the three-year period for which we are seeking approval, the weighted average aggregate annual cost would be $1,053,492,000.[102]

D. Request for Comments

We request comment on whether these estimates are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements of the proposed

[91] (40 hours per week × 52 weeks = 2,080 hours per year).

[92] (2,080 hours per fund × 3,100 funds = 6,448,000 hours per year).

[93] ($100,000 per fund × 3,100 funds = $310,000,000).

[94] ($6,640 per fund × 3,100 funds = $20,584,000).

[95] (240 hours per intermediary × 6,800 intermediaries = 1,632,000 hours).

[96] ($150,000 per intermediary × 6,800 intermediaries = $1,020,000,000).

[97] ($100,000 per intermediary × 6,800 intermediaries = $680,000,000).

[98] (10 requests per year × 3,100 funds = 31,000 requests per year).

[99] (31,000 requests per year × 10 minutes = 310,000 minutes or 5,167 hours).

[100] In the first year after adoption: (i) The aggregate burden for funds is expected to be 6,926,950 hours (13,950 hours for contract modifications + 139,500 hours for funds relying on paragraph (b)(1) + 325,500 hours for funds relying on paragraph (b)(2) + 6,448,000 hours for the information collection requirements in paragraph (c) = 6,926,950 hours); (ii) the aggregate burden for intermediaries is expected to be 1,933,920 hours (244,800 hours for intermediaries relying on paragraph (b)(1) + 57,120 for intermediaries relying on paragraph (b)(2) + 1,632,000 hours for the information collection requirements in paragraph (c) = 1,933,920 hours); and (iii) the aggregate burden for redeeming shareholders is expected to be 5,167 hours. Thus, in the first year after adoption, the aggregate burden for all respondents is expected to be 8,866,037 hours (6,926,950 hours for funds + 1,933,920 hours for intermediaries + 5,167 hours for redeeming shareholders = 8,866,037 hours). In the second and third years after adoption, the annual burden for respondents is expected to fall to 8,852,087 hours, because the burden attributable to one-time contract modifications will no longer be incurred by funds. Thus, the average annual burden over the three-year period for which we are seeking approval is expected to be 8,856,737 hours (8,866,037 first year's burden + 8,852,087 second year's burden + 8,852,087 third year's burden/3 = 8,856,737 hours).

[101] Specifically, the staff estimates that annually there will be: (i) 150,000,000 responses under paragraph (b)(1) (1 response for each of the 15% of the estimated 1 billion purchase and sale transactions in fund shares that we assume will be subject to paragraph (b)(1) = 150,000,000 responses); (ii) 5,208,000 responses under paragraph (b)(2) (1 response for each of the estimated 35% of the approximately 14,880,000 affected redemption transactions per year (3,100 funds × 4,800 affected redemptions per fund per year = 14,880,000 affected redemptions) that are subject to paragraph (b)(2) = 5,208,000 responses); (iii) 353,600 responses under paragraph (c) (6,800 intermediaries × 52 responses per year = 353,600 responses); and (iv) 31,000 responses by shareholders seeking a financial emergency exception under the rule. Thus, we anticipate that there will be a total of 155,592,600 annual responses (150,000,000 responses under (b)(1) + 5,208,000 responses under (b)(2) + 353,600 responses under (c) + 31,000 responses for the emergency exception = 155,592,600 responses).

[102] In the first year after adoption: (i) the aggregate cost burden for funds is expected to be $1,178,000,000 ($260,400,000 for funds relying on paragraph (b)(1) + $607,600,000 for funds relying on paragraph (b)(2) + 310,000,000 for the information collection requirements in paragraph (c) = $1,178,000,000); and (ii) the aggregate cost burden for intermediaries is expected to be $1,145,800,000 ($102,000,000 for intermediaries relying on paragraph (b)(1) + $23,800,000 for intermediaries relying on paragraph (b)(2) + $1,020,000,000 for the information collection requirements in paragraph (c) = $1,145,800,000). Thus, in the first year after adoption, the aggregate cost burden for all respondents is expected to be $2,323,800,000. In the second and third years after adoption, the annual cost burden for respondents is expected to fall to $836,676,000, because funds and intermediaries will incur only the ongoing operation and maintenance costs of systems that have been put in place during the first year. Specifically, in each of the second and third years after adoption: (i) The aggregate cost burden for funds is expected to be $30,876,000 ($3,087,600 for funds relying on paragraph (b)(1) + $7,204,400 for funds relying on paragraph (b)(2) + $20,584,000 for the information collection requirements in paragraph (c) = $30,876,000); and (ii) the aggregate cost burden for intermediaries is expected to be $805,800,000 ($102,000,000 for intermediaries relying on paragraph (b)(1) + $23,800,000 for intermediaries relying on paragraph (b)(2) + $680,000,000 for the information collection requirements in paragraph (c) = $805,800,000). Thus, the average annual cost burden over the three year period for which we are seeking approval is expected to be $1,053,492,000 ($1,178,000,000 first year's burden + $805,800,000 second year's burden + $805,800,000 third year's burden/3 = $1,053,492,000).

amendments should direct them to the Office of Management and Budget, Attention Desk Officer of the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–11–04. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this Release; therefore a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–11–04, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services.

VI. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (''IRFA'') has been prepared in accordance with 5 U.S.C. 603. It relates to rule 22c–2 and amendments to rule 11a–3 under the Investment Company Act, which we are proposing in this Release.

A. Reasons for the Proposed Action

As discussed more fully in Section I of this Release, the reason for the proposed action is that short-term trading of fund shares, including market timing activity, imposes costs on funds that are borne by long-term shareholders.

B. Objectives of the Proposed Action

As discussed more fully in Section II of this Release, the objective of the proposed rule is to require shareholders to reimburse the fund for costs incurred by the fund when they engage in short-term trading in fund shares, and to deter short-term trading.

C. Legal Basis

As indicated in Section VII of this Release, new rule 22c–2 and amendments to rule 11a–3 are proposed pursuant to the authority set forth in sections 11(a), 22(c) and 38(a) of the Investment Company Act.[103]

D. Small Entities Subject to the Proposed Rule and Amendments

A small business or small organization (collectively, ''small entity'') for purposes of the Regulatory Flexibility Act is a fund that, together with other funds in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[104] Of approximately 3,925 funds (3,100 registered open-end investment companies and 825 registered unit investment trusts), approximately 163 are small entities.[105] A broker-dealer is considered a small entity if its total capital is less than $500,000, and it is not affiliated with a broker-dealer that has $500,000 or more in total capital.[106] Of approximately 6,800 registered broker-dealers, approximately 880 are small entities, with approximately 400 of these classified as specialists in funds. A transfer agent is considered a small entity if it has: (i) Received less than 500 items for transfer and less than 500 items for processing during the preceding six months (or in the time that it has been in business, if shorter); (ii) transferred items only of issuers that would be deemed ''small businesses'' or ''small organizations'' as defined in rule 0–10 under the Securities Exchange Act of 1934; (iii) maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and (iv) is not affiliated with any person (other than a natural person) that is not a small business or small organization under rule 0–10.[107] We estimate that 40 out of approximately 208 registered fund transfer agents qualify as small entities.

As we discussed above, under the proposed rule, any redemption of fund shares (with certain limited exceptions) held for five business days or less would be subject to a two percent redemption fee. This rule would apply to all transactions, including those in omnibus accounts. The Commission staff expects that this rule would require that funds and intermediaries develop or upgrade software or other technological systems to impose redemption fees in omnibus accounts. Because the Commission and its staff are not familiar with the full range of available technologies associated with these upgrades, we request that commenters address the cost of such upgrades, including specific data when available.

E. Reporting, Recordkeeping, and Other Compliance Requirements

The proposal would not contain new mandatory reporting or recordkeeping requirements.

F. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any federal rules that duplicate, overlap, or conflict with the proposed rule.

G. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. Alternatives in this category would include: (i) Establishing different compliance or reporting standards that take into account the resources available to small entities; (ii) clarifying, consolidating, or simplifying the compliance requirements under the rule for small entities; (iii) using performance rather than design standards; and (iv) exempting small entities from coverage of the rule, or any part of the rule.

The Commission does not presently believe that the establishment of special compliance requirements or timetables under the proposal for small entities is feasible or necessary. The proposed rule arises from enforcement actions and settlements that underscore the need to reimburse funds so that long-term shareholders will not be disadvantaged by shareholders that engage in frequent trading and fund managers that selectively permit such short-term trading. Excepting small entities from the proposed rule could disadvantage fund shareholders of small entities and compromise the effectiveness of the proposed rule. Nevertheless, we request comment on whether it is feasible or necessary for small entities to have special requirements or timetables for compliance with the proposed rule. Should the proposed rule be altered in order to ease the regulatory burden on small entities, without sacrificing its effectiveness?

With respect to further clarifying, consolidating or simplifying the compliance requirements of the proposed rule, using performance rather than design standards, and exempting small entities from coverage of the rule

[103] 15 U.S.C. 80a–11(a), 80a–22(c), and 80a–37(a).

[104] 17 CFR 270.0–10.

[105] Some or all of these entities may contain multiple series or portfolios. If a registered investment company is a small entity, the portfolios or series it contains are also small entities.

[106] 17 CFR 240.0–10.

[107] 17 CFR 240.0–10(h).

or any part of the rule, we believe such changes are impracticable. Small entities are as vulnerable to the problems uncovered in recent enforcement actions and settlements as large entities; shareholders of small entities are equally in need of protection from short-term traders. We believe that a mandatory redemption fee will serve as a useful tool to discourage short-term trading. Exempting small entities from coverage of the rule or any part of the rule could compromise the effectiveness of the proposed rule.

H. Solicitation of Comments

The Commission encourages the submission of comments with respect to any aspect of this IRFA. Comment is specifically requested on the number of small entities that would be affected by the proposed rule, and the likely impact of the proposals on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting its extent. These comments will be considered in connection with any adoption of the proposed rule and amendments, and reflected in the Final Regulatory Flexibility Analysis.

Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following E-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–11–04, and this file number should be included on the subject line if E-mail is used.[108] Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. Electronically submitted comment letters also will be posted on the Commission's Internet Web site (*http://www.sec.gov*).

VII. Statutory Authority

The Commission is proposing rule 22c–2 and amendments to rule 11a–3 pursuant to the authority set forth in sections 11(a), 22(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a–11(a), 80a–22(c) and 80a–37(a)].

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule

For reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

§ 270.11a–3 [Amended]

2. Section 270.11a–3 is amended by revising the undesignated paragraph following (b)(2) to read as follows:

* * * * *

(b) * * *

(2) * * *

Any scheduled variation of a redemption fee, other than pursuant to § 270.22c–2, must be reasonably related to the costs to the fund of processing the type of redemptions for which the fee is charged;

* * * * *

3. Section 270.22c–2 is added to read as follows:

§ 270.22c–2 Redemption fees for redeemable securities.

(a) *Redemption fee.* It is unlawful for any fund issuing redeemable securities, its principal underwriter, or any dealer in such securities to redeem a redeemable security issued by the fund, within five business days after the security was purchased, unless the fund imposes a redemption fee of two percent of the amount redeemed, which fee shall be retained by the fund.

(b) *Transaction information required for assessment of fee.* For the purpose of imposing the fee required pursuant to paragraph (a) of this section, a fund must, with respect to each shareholder account held by a financial intermediary:

(1) Require the financial intermediary to provide the fund, upon submission of each purchase and redemption order, the account number used by the financial intermediary to identify the shareholder;

(2) Have entered into an agreement with the financial intermediary under which the intermediary must provide the fund, as to redemption orders upon which the fund must charge a redemption fee under paragraph (a) of this section, transaction and holdings information sufficient to permit the fund to assess the amount of the redemption fee; or

(3) Have entered into an agreement with the financial intermediary under which the intermediary must assess the redemption fee required in paragraph (a) of this section.

(c) *Periodic information required.* In order to determine whether the redemption fee is properly assessed under paragraph (a) of this section, a fund must require each financial intermediary, as described in paragraph (b) of this section, to provide it no less frequently than once each week,

(1) The Taxpayer Identification Number of all shareholders that purchased or redeemed shares held through an account with the financial intermediary for the time period submitted; and

(2) The amount and dates of such shareholder purchases and redemptions for the time period submitted.

(d) *Calculation of the redemption fee.* In determining the amount of the redemption fee under paragraph (a) of this section, the fund must treat the shares held in the account (or an account to which the account is the successor) the longest period of time as the first shares redeemed (first in, first out or FIFO). The fund must determine the amount of the redemption fee on the basis of proceeds payable to the shareholder before the imposition of any deferred sales load or administrative fee. The fee may either reduce the amount of the proceeds to the shareholder or increase the number of shares redeemed.

(e) *Exceptions.*—(1) *Waiver of fees.* Notwithstanding paragraph (a),

(i) A fund may waive the redemption fee if the amount of the shares redeemed is 2,500 dollars or less;[109] and

(ii) In the case of an unanticipated financial emergency, upon written request of the shareholder,

(A) A fund must waive the redemption fee if the amount of the shares redeemed is 10,000 dollars or less; and

(B) A fund may waive the redemption fee if the amount of the shares redeemed is more than 10,000 dollars.

(2) *Excepted funds.* The requirements of paragraphs (a) through (c) of this section do not apply to:

(i) Money market funds;

(ii) Any fund that issues securities that are listed on a national securities exchange; and

(iii) Any fund that has adopted a fundamental policy to affirmatively

[108] Comments on the IRFA will be placed in the same public file that contains comments on the proposed rule.

[109] As discussed in the preamble to this Release, the Commission also is proposing, as an alternative to this paragraph (e)(1)(i), that the waiver of fees on redemptions of $2,500 or less be mandatory rather than discretionary on the part of the fund. *See supra* note 36 and accompanying text. If we were to adopt this alternative approach, paragraph (e)(1)(i) of the proposed rule would be revised accordingly.

permit short-term trading of its securities, if its prospectus clearly and prominently discloses that the fund permits short-term trading of its securities and that such trading may result in additional costs for the fund.

(f) *Definitions.* For the purposes of this section,

(1) *Financial intermediary* means a record holder as defined in rule 14a–1(i) under the Securities Exchange Act of 1934 (17 CFR 240.14a–1(i)) and an insurance company that sponsors a registered separate account organized as a unit investment trust.

(2) *Fund* means an open-end management investment company that is registered or required to register under section 8 of the Investment Company Act (15 U.S.C. 80a–8), and includes a separate series of such an investment company.

(3) *Money market fund* means an open-end management investment company that is registered under the Act and is regulated as a money market fund under § 270.2a–7.

By the Commission.

Dated: March 5, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–5374 Filed 3–10–04; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Thursday,
March 11, 2004

Part V

Federal Trade Commission

16 CFR Part 316

Definitions, Implementation, and Reporting Requirements Under the CAN–SPAM Act; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 316

[Project No. R411008]

RIN 3084–AA96

Definitions, Implementation, and Reporting Requirements Under the CAN–SPAM Act

AGENCY: Federal Trade Commission (FTC).

ACTION: Advance notice of proposed rulemaking; request for public comment.

SUMMARY: The FTC is requesting comment on various topics related to §§ 3(2)(c), 3(17)(B), 5(c)(1), 5(c)(2), and 13 of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (''CAN–SPAM Act'' or ''the Act''). In addition, the FTC is requesting comment on topics relevant to certain reports to Congress required by additional provisions of the CAN–SPAM Act.

DATES: Comments addressing the ''National Do Not E-mail'' Registry must be submitted on or before March 31, 2004. Comments addressing any other aspect of the CAN–SPAM Act must be submitted on or before April 12, 2004.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''CAN–SPAM Act Rulemaking, Project No. R411008'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed to the following address: Federal Trade Commission, CAN–sySPAM Act, Post Office Box 1030, Merrifield, VA 22116–1030. Please note that courier and overnight deliveries cannot be accepted at this address. Courier and overnight deliveries should be delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form.

An electronic comment can be filed by (1) clicking on *http://www.regulations.gov;* (2) selecting ''Federal Trade Commission'' at ''Search for Open Regulations;'' (3) locating the summary of this Notice; (4) clicking on ''Submit a Comment on this Regulation;'' and (5) completing the form. For a given electronic comment, any information placed in the following fields—''Title,'' ''First Name,'' ''Last Name,'' ''Organization Name,'' ''State,'' ''Comment,'' and ''Attachment''—will be publicly available on the FTC Web site. The fields marked with an asterisk on the form are required in order for the FTC to fully consider a particular comment. Commenters may choose not to fill in one or more of those fields, but if they do so, their comments may not be considered.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments with all required fields completed, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ ftc/ privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Michael Goodman, Staff Attorney, (202) 326–3071; or Catherine Harrington-McBride, Staff Attorney, (202) 326–2452; Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The CAN–SPAM Act, which took effect on January 1, 2004, imposes a series of new requirements on the use of commercial electronic mail messages (''email''). In addition, the Act gives federal civil and criminal enforcement authorities new tools to combat unsolicited commercial email (''UCE'' or ''spam''). The Act also allows state attorneys general to enforce its civil provisions, and creates a private right of action for providers of Internet access services.

The CAN–SPAM Act directs the Commission to issue regulations, not later than 12 months following the enactment of the Act, ''defining the relevant criteria to facilitate the determination of the *primary purpose* of an electronic mail message.''[1] The term ''the primary purpose'' is incorporated in the Act's definition of the key term ''commercial electronic mail message.'' Specifically, ''commercial electronic mail message'' encompasses ''any electronic mail message the *primary purpose* of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose.)''[2]

The CAN–SPAM Act also provides discretionary authority for the Commission to issue regulations concerning certain of the Act's other definitions and provisions.[3] Specifically, the Commission is authorized to:

- Modify the definition of the term ''transactional or relationship message'' under the Act ''to the extent that such modification is necessary to accommodate changes in electronic mail technology or practices and accomplish the purposes of [the] Act;''[4]
- Modify the 10-business-day period prescribed in the Act for honoring a recipient's opt-out request;[5]
- Specify activities or practices as aggravated violations (in addition to those set forth as such in § 5(b) of the CAN–SPAM Act) ''if the Commission determines that those activities or practices are contributing substantially to the proliferation of commercial electronic mail messages that are unlawful under subsection [5(a) of the Act];''[6] and
- Issue regulations to implement the provisions of this Act.''[7]

In issuing this Advance Notice of Proposed Rulemaking (''ANPR''), the Commission initiates the mandatory ''primary purpose'' rulemaking proceeding by soliciting comment on issues relating to that term and its use in the Act. In addition, this notice solicits comments on the several areas of discretionary regulation listed above. Finally, the Commission also seeks

[1] CAN–SPAM Act, § 3(2)(C).

[2] CAN–SPAM Act, § 3(2)(A) (emphasis supplied).

[3] The Act authorizes the Commission to use notice and comment rulemaking pursuant to the Administrative Procedures Act, 5 U.S.C. 553. CAN–SPAM Act, § 13.

[4] CAN–SPAM Act, § 3(17)(B).

[5] CAN–SPAM Act, § 5(c)(1)(A)–(C).

[6] CAN–SPAM Act, § 5(c)(2).

[7] CAN–SPAM Act, § 13(a). This provision excludes from the scope of its general grant of rulemaking authority § 4 of the Act (relating to criminal offenses) and § 12 of the Act (expanding the scope of the Communications Act of 1934). In addition, § 13(b) limits the general grant of rulemaking authority in § 13(a) by specifying that the Commission may not use that authority to establish ''a requirement pursuant to § 5(a)(5)(A) to include any specific words, characters, marks, or labels in a commercial electronic mail message, or to include the identification required by § 5(a)(5)(A) in any particular part of such a mail message (such as the subject line or body).'' Section 5(a)(5)(A) provides that ''it is unlawful for any person to initiate the transmission of any commercial electronic mail message to a protected computer unless the message provides clear and conspicuous identification that the message is an advertisement or solicitation * * *''

comment in this ANPR on a variety of topics relevant to certain reports that, pursuant to the mandate of the CAN–SPAM Act, the Commission must issue within the coming two years.

II. Mandatory ''Primary Purpose'' Rulemaking

The CAN–SPAM Act mandates that the FTC issue regulations ''defining the relevant criteria to facilitate the determination of the primary purpose of an electronic mail message.'' This mandate is integral to the Act's definition of ''commercial electronic mail message.'' [8] Generally, the Act applies only to messages that fall within this definition.[9] Thus, the ''primary purpose'' regulation will elucidate how to determine whether a particular message constitutes a ''commercial electronic mail message,'' and is therefore subject to the CAN–SPAM Act's requirements and prohibitions. Accordingly, the FTC seeks comment on how to determine an electronic mail message's primary purpose, including comment on criteria that would facilitate this determination.

III. Subjects for Discretionary Rulemaking Under the CAN–SPAM Act

In addition to seeking comment on the mandatory ''primary purpose'' rulemaking, the Commission also seeks comment on the four areas of discretionary rulemaking that were established in the Act. These four areas, described in detail below, are: (1) The Act's definition of ''transactional or relationship messages;'' (2) the 10-business-day period for processing opt-out requests; (3) the Act's enumeration of ''aggravated violations;'' and (4) the implementation of the provisions of the CAN–SPAM Act generally.

A. Transactional or Relationship Messages

The CAN–SPAM Act designates five broad categories of messages as ''transactional or relationship messages.''[10] The Act excludes these messages from its definition of ''commercial electronic mail message,'' [11] and thus excludes them from most of the Act's substantive requirements and prohibitions.[12] ''Transactional or relationship messages'' are those, the primary purpose of which is either:

- To facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender;
- To provide warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient;
- To provide specified types of information with respect to a subscription, membership, account, loan, or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender; [13]
- To provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled; or
- To deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender.

Section 3(17)(B) gives the Commission the authority to modify the definition in § 3(17)(A) to ''expand or contract the categories of messages that are treated as ''transactional or relationship messages'' for the purposes of this Act to the extent that such modification is necessary to accommodate changes in electronic mail technology or practices and accomplish the purposes of the Act.'' [14] Accordingly, the FTC seeks comment on the categories of ''transactional or relationship messages'' identified in the Act, and on how changes in technology or practices might warrant modifications with respect to these categories to accomplish the purposes of the Act. The Commission seeks comment on additional categories of messages that changes in technology or practices might warrant excluding from the definition of ''commercial electronic messages'' by designating them as ''transactional or relationship messages.'' The Commission also seeks comment on additional categories of messages that might warrant designation as ''transactional or relationship messages'' to accomplish the purposes of the Act. The Commission also seeks comment on categories listed in § 3(17) that, due to changing technology or practices, might become inappropriate to exclude from coverage of CAN–SPAM's provisions as ''transactional or relationship messages.''

B. 10-Business-Day Period for Processing Opt-Out Requests

Section 5(a)(4) of the CAN–SPAM Act addresses the time within which a request to ''opt-out'' of receiving additional electronic mail messages must be honored. Section 5(a)(4)(A) prohibits senders and persons acting on their behalf from initiating the transmission of a commercial email message to any recipient who has opted out of receiving their commercial email messages. This section also provides that senders have ten (10) business days after receiving a recipient's opt-out request to process it and put it into effect.

Section 5(c)(1) gives the Commission the authority to issue regulations modifying the 10-business-day period for processing recipients' opt-out requests if the Commission determines that a different time period would be more reasonable ''after taking into account (A) the purposes of [subsection 5(a)]; (B) the interests of recipients of commercial electronic mail; and (C) the burdens imposed on senders of lawful commercial electronic mail.'' [15] Accordingly, the FTC seeks comment on the reasonableness of the 10-business-day time period for processing opt-out requests, and on whether a different time period would be more reasonable, in view of the three considerations enumerated in the statute and the relative costs and benefits.

C. Additional Aggravated Violations

Section 5(c)(2) of the Act grants the Commission rulemaking authority with respect to the list of ''aggravated violations'' set forth in § 5(b) of the Act. The practices listed in § 5(b) include email address harvesting and dictionary attacks. The Act's provisions relating to enforcement by the States and by providers of Internet access service create the possibility of increased statutory damages if the court finds a defendant has engaged in one of the practices specified in § 5(b) while also violating § 5(a). Specifically, §§ 7(f)(3)(C) and (g)(3)(C) permit the court to increase a statutory damages award up to three times the amount that would have been granted without the commission of an aggravated

[8] CAN–SPAM, § 3(2)(C).

[9] One provision, § 5(a)(1), which prohibits false or misleading transmission information, applies equally to ''commercial electronic mail messages'' and ''transactional or relationship messages'; otherwise, CAN–SPAM's prohibitions and requirements cover only ''commercial electronic mail messages.''

[10] CAN–SPAM Act, § 3(17).

[11] CAN–SPAM Act, § 3(2)(B).

[12] *See* note 9 above.

[13] The specified types of information are: notification concerning a change in the terms or features; notification of a change in the recipient's standing or status; or regular periodic account statement or balance information. CAN–SPAM Act, § 3(17)(A)(iii).

[14] CAN–SPAM Act, § 3(17)(B).

[15] CAN–SPAM Act, § 5(c)(1).

violation.[16] The Commission seeks comment on what activities and practices, if any, should be added to the list of aggravated violations under § 5(b) of the Act.

D. Implementation of Provisions of the CAN–SPAM Act Generally

Section 13 of the Act details the fourth and final area of discretionary rulemaking by the Commission under the CAN–SPAM Act. Specifically, § 13(a) provides that the Commission may issue regulations to implement the provisions of the Act.[17] Accordingly, the Commission seeks comment on any additional regulations that may help implement the provisions of the Act.

Since the effective date of CAN–SPAM, several issues have repeatedly arisen that potentially may warrant rulemaking under § 13. The first of these involves a scenario where a sender of a commercial email message seeks to induce recipients to forward the message to friends and acquaintances, who, in turn, are urged to forward the message. The Commission seeks comment on whether it would further the purposes of CAN–SPAM or assist the efforts of companies and individuals seeking to comply with the Act if the Commission were to adopt rule provisions clarifying the legal obligations of initiators and recipients who forward messages in such ''forward-to-a-friend'' scenarios.

The second issue involves whether several entities or persons simultaneously could be considered the ''sender'' of a particular electronic mail message under the terms of the Act. For example, an email message that promotes an upcoming conference and also includes ads from the companies sponsoring the conference may have more than one sender. A common concern regarding this type of message is whether it may be sent to a recipient who has previously opted out of receiving messages from one of the sponsoring companies whose ad is in the message. The Commission seeks comment on whether it would further the purposes of CAN–SPAM or assist the efforts of companies and individuals seeking to comply with the Act if the Commission were to adopt rule provisions clarifying the obligations of multiple senders under the Act.

The third issue involves the requirement of § 5(a)(5)(A)(iii) of the Act for initiators of commercial electronic mail to include in their messages, *inter alia,* ''a valid physical postal address of the sender.'' Some companies and individuals seeking to comply with the Act have sought guidance on what is necessary for an address to meet the requirements of the Act. Some have asked whether a valid physical postal address would include a Post Office box or commercial mail drop. The Commission seeks comment on whether it would further the purposes of CAN–SPAM or assist the efforts of companies and individuals seeking to comply with the Act if the Commission were to adopt rule provisions clarifying what constitutes a valid physical postal address of the sender.

There may be other issues of interpretation or compliance that have not yet come to the attention of the Commission but that might warrant consideration for rulemaking under § 13 of the Act. The Commission seeks comment on any such issues, and solicits specific recommendations for proposed provisions that might further the purposes of CAN–SPAM or assist the efforts of companies and individuals seeking to comply with the Act.

IV. Reports Required by CAN–SPAM

CAN–SPAM requires the Commission to prepare and submit to Congress four separate reports within the next two years: A report on establishing a nationwide marketing Do Not E-mail registry to be submitted by June 16, 2004; a report on establishing a system for rewarding those who supply information about CAN–SPAM violations by September 16, 2004; a report setting forth a plan for requiring commercial email to be identifiable from its subject line by June 16, 2005; and a report on the effectiveness of CAN–SPAM by December 16, 2005.

A. National Do Not E-Mail Registry

Section 9(a) of the CAN–SPAM Act mandates a Commission report setting forth ''a plan and timetable for establishing a nationwide marketing Do-Not-E-Mail registry.'' The report is to include ''an explanation of any practical, technical, security, privacy, enforceability, or other concerns that the Commission has regarding such a registry; and * * * an explanation of how the registry would be applied with respect to children with email accounts.''[18] Moreover, § 9(b) provides that ''the Commission may establish and implement the plan, but not earlier than 9 months after the date of enactment of this Act.'' Thus, Congress has authorized establishment of a National Do Not E-Mail Registry, but is interested in learning of potential concerns about practicality, technical feasibility, privacy, and enforceability that such a registry raises. The Commission issued a Request for Information (''RFI'') to potential vendors seeking information on how an effective registry might be structured,[19] and is also seeking comment in response to this Notice that would assist it in preparing this report.

B. A System for Rewarding Those Who Supply Information About CAN–SPAM Violations

Section 11(1) of the Act requires the Commission, on or before September 16, 2004, to submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce setting forth a system for rewarding those who supply information about violations of the Act. The statute further specifies that the report include ''procedures for the Commission to grant a reward of not less than 20 percent of the total civil penalty collected for a violation of the Act to the first person that identifies the person in violation of the Act, and supplies information that leads to the successful collection of a civil penalty by the Commission.'' (The Act, however, does not authorize the Commission to establish or implement such a reward system.) In addition, the statute requires that the report also include ''procedures to minimize the burden of submitting a complaint to the Commission concerning violations of [the CAN–SPAM] Act, including procedures to allow the electronic submission of complaints to the Commission.'' Accordingly, the Commission seeks comment that would assist it in preparing this report.

C. Labeling Commercial Electronic Mail

Section 11(2) of the Act requires the Commission to submit a report that sets forth a plan for requiring commercial email to be identifiable from its subject line, or an explanation of any concerns the Commission has that cause the Commission to recommend against the

[16] This heightened statutory damages calculation also applies when a court finds that the defendant's violations of § 5(a) were committed ''willfully and knowingly.'' CAN–SPAM Act, §§ 7(f)(3)(C) and (g)(3)(C).

[17] As noted above, the Act expressly excludes from this grant of rulemaking authority the criminal provisions in § 4 and its amendment of the Communications Act of 1934 in § 12. Section 13(b) further limits the scope of this rulemaking authority by prohibiting the Commission from requiring any specific words, characters, marks, or labels in a commercial email pursuant to § 5(a)(5)(A), or from requiring the identification required by § 5(a)(5)(A) in any particular part of a commercial email, such as the subject line or body. *See* note 7, above.

[18] CAN–SPAM Act, § 9(a).

[19] This RFI is available at: *http://www.ftc.gov/ftc/oed/fmo/procure/040224donotemailrfi.pdf.* Responses to this RFI were due on or before March 10, 2004.

plan.[20] This report is due on or before June 16, 2005. Accordingly, the Commission seeks comment on how best to require that commercial email be identifiable from its subject line, and on concerns about implementing this type of labeling requirement. In particular, information is sought concerning the feasibility, costs, and benefits of labeling commercial email.

D. Effectiveness and Enforcement of the CAN–SPAM Act

Section 10 of the CAN–SPAM Act requires the Commission to submit a report to Congress providing a detailed analysis of the effectiveness and enforcement of the Act and the need (if any) for Congress to modify such provisions. This report is due on or before December 16, 2005, and must include:

- An analysis of the extent to which technological and marketplace developments, including changes in the nature of the devices through which consumers access their electronic mail messages, may affect the practicality and effectiveness of the Act;
- Analysis and recommendations concerning how to address commercial email that originates in or is transmitted through or to facilities or computers in other nations; and
- Analysis and recommendations concerning options for protecting consumers, including children, from receiving and viewing commercial email that is obscene or pornographic.

Accordingly, the Commission seeks comment on how the effectiveness and enforcement of the Act should be assessed, and on the specific areas of inquiry set forth in § 10 of the Act.

V. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. See 16 CFR 1.26(b)(5).

VI. Invitation to Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments addressing the issues raised by this Notice. Written comments on the National Do Not E-Mail Registry must be submitted on or before March 31, 2004. Written comments on all other aspects of the CAN–SPAM Act must be submitted on or before April 12, 2004. Comments should refer to ''CAN–SPAM Act Rulemaking, Project No. R411008'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed to the following address: Federal Trade Commission, CAN–SPAM Act, Post Office Box 1030, Merrifield, VA 22116–1030. Please note that courier and overnight deliveries cannot be accepted at this address. Courier and overnight deliveries should be delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.''[21]

An electronic comment can be filed by (1) clicking on *http://www.regulations.gov;* (2) selecting ''Federal Trade Commission'' at ''Search for Open Regulations;'' (3) locating the summary of this Notice; (4) clicking on ''Submit a Comment on this Regulation;'' and (5) completing the form. For a given electronic comment, any information placed in the following fields—''Title,'' ''First Name,'' ''Last Name,'' ''Organization Name,'' ''State,'' ''Comment,'' and ''Attachment''—will be publicly available on the FTC Web site. The fields marked with an asterisk on the form are required in order for the FTC to fully consider a particular comment. Commenters may choose not to fill in one or more of those fields, but if they do so, their comments may not be considered.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments with all required fields completed, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Without limiting the scope of issues on which it seeks comment, the Commission is particularly interested in receiving comments on the following questions. In responding to these questions, include detailed, factual support whenever possible.

A. Criteria for Determining Whether ''The Primary Purpose'' of an Electronic Mail Message is Commercial

1. The term ''the primary purpose'' could be interpreted to mean that an email's commercial advertisement or promotion is more important than all of the email's other purposes combined. Does this interpretation provide relevant criteria to help determine the primary purpose of an email? Why or why not? When an email has more than one purpose, what determines whether one purpose is more important than all other purposes combined?

2. The term ''the primary purpose'' could be interpreted to mean that the email's commercial advertisement or promotion is more important than any other single purpose of the email, but not necessarily more important than all other purposes combined. Does this interpretation provide relevant criteria to help determine the primary purpose of an email? Why or why not? When an email has more than one purpose, what determines whether one purpose is more important than any other purpose?

3. In other contexts, the FTC has stated that marketing material is to be judged by the net impression that the material as a whole makes on the reasonable observer. The ''net impression'' standard has been used to assess the meaning of an advertisement and the adequacy of disclosures. This standard takes into account placement of disclosures within the marketing material, the proximity of disclosures to the relevant claims, the prominence of the disclosures, and whether other parts of the marketing material distract attention from the disclosure. Should this ''net impression'' analysis be applied to determining whether the primary purpose of an email is a commercial advertisement or promotion? Why or why not? Are there considerations unique to electronic mail that would influence the application of such analysis, and if so, how?

[20] Section 11(2) expressly contemplates that the means for making commercial electronic mail identifiable from its subject line should be ''by means of compliance with Internet Engineering Task Force Standards, the use of the characters ''ADV'' in the subject line, or other comparable identifier.''

[21] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

4. The term ''the primary purpose'' could be interpreted to mean that a commercial advertisement or promotion in an email is more than incidental to the email. Does this interpretation provide relevant criteria to help determine ''the'' primary purpose of an email? Why or why not?

5. In determining whether a commercial advertisement or promotion in an email is the primary purpose of the email, one approach could be to base the analysis on whether the commercial aspect of the email financially supports the other aspects of the email. For example, an electronic newsletter may be funded by advertising within the newsletter. Such advertising arguably would not constitute the primary purpose of the newsletter. Does the issue of whether the commercial aspect provides the financial support for non-commercial content provide relevant criteria to help determine the primary purpose of an email? Why or why not? Does it matter what the overall purpose of the newsletter is? Why or why not? Is this an appropriate way to approach the question of whether an email's primary purpose is commercial? Why or why not?

6. Should the identity of an email's sender affect whether or not the primary purpose of the sender's email is a commercial advertisement or promotion? Why or why not? For example, if a professional sports league sends email promoting its involvement with a charitable organization, should that email be considered to have a commercial ''primary purpose'' under the Act based on the league's ''for-profit'' status?

7. Are there other ways to determine whether a commercial advertisement or promotion in an email is the primary purpose of the email? Do these approaches provide relevant criteria to help determine the primary purpose of an email? Why or why not?

B. Modifying What Is a ''Transactional or Relationship Message''

1. Have any changes in electronic mail technology or practices occurred since the CAN–SPAM Act became effective on January 1, 2004, that would necessitate modification of the CAN–SPAM Act's definition of ''transactional or relationship message'' to accomplish the purposes of the Act?

2. Email messages that facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender are considered transactional or relationship messages under the Act. Are the terms ''facilitate, complete, or confirm'' clear, or is further clarification needed to prevent evasion of the Act's requirements and prohibitions?

3. Email messages that provide warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient are considered transactional or relationship messages under the Act. Should the Commission modify or elaborate on this definition? Why or why not?

4. Email messages that provide notice concerning a change in the terms or features of a subscription, membership, account, loan, or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender are considered transactional or relationship messages under the Act. Should the Commission modify or elaborate on this definition? Why or why not?

5. Email messages that provide notification of a change in the recipient's standing or status with respect to a subscription, membership, account, loan, or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender are considered transactional or relationship messages under the Act. Are the terms used in this subsection of the Act (§ 3(17)(A)(iii)) clear, or is further clarification needed to prevent evasion of the Act's requirements and prohibitions?

6. Email messages that provide, at regular periodic intervals, account balance information or other types of account statements with respect to a subscription, membership, account, loan, or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender are considered transactional or relationship messages under the Act. Should the Commission modify or elaborate on this definition? Why or why not?

7. Email messages that provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled are considered transactional or relationship messages under the Act. Should the Commission modify or elaborate on this definition? Why or why not?

8. Email messages that deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender are considered transactional or relationship messages under the Act. Should the Commission modify or elaborate on this definition? Why or why not?

9. Some transactional or relationship messages may also advertise or promote a commercial product or service. In such a case, is ''the primary purpose'' of the message relevant? If so, what criteria should determine what is ''the primary purpose''? Should such messages be deemed to be commercial email messages? Should they be deemed transactional or relationship messages? Why?

C. Modifying the 10–Business-Day Time Period for Processing Opt-Out Requests

1. Is ten (10) business days an appropriate deadline for acting on an opt-out request by deleting the requester's email address from the sender's email directory or list? Why or why not? If not, what time limit would be appropriate? Why?

2. What procedures are required to delete a person's email address from the sender's email directory or list? What reasons, if any, prevent such deletion in a time period shorter than ten (10) business days? What burdens, including costs, would be borne by senders if the time period were shortened? What benefits to consumers would result from a time deadline shorter than ten (10) business days for effectuating an opt-out request?

3. What costs are associated with deleting a person's email address from a sender's email directory or list? What costs does the recipient bear from unwanted electronic mail during the period from submission of the request to the effectuation of that request?

4. What currently is the average time to create and implement procedures to delete a person's email address from a sender's email directory or list following that person's opt-out request? What factors affect the length of time necessary to create and implement these procedures?

5. What currently is the average time in which a request to be removed from an email list is processed once these procedures have been created and implemented? What factors affect the length of time necessary to process such a request?

6. What is the industry standard, if any, regarding the time frame to create and implement procedures for processing opt-out requests? What is the industry standard, if any, regarding the time frame to process opt-out requests once procedures have been created and implemented?

7. How are lists of email addresses used for electronic mail marketing maintained, distributed, and used? What impact, if any, do the maintenance, distribution, and use of these lists have on the time it takes to effectuate an opt-out request?

8. How do the size and structure of the sender's business, the use of third-party e-mailers, and the manner in which opt-out requests are received affect the time it takes to effectuate an opt-out request?

D. Identifying Additional ''Aggravated Violations''

1. Section 5(c)(2) of the Act gives the Commission authority to ''specify additional activities or practices to which [§ 5(b)] applies if the Commission determines that those activities or practices are contributing substantially to the proliferation of commercial electronic mail messages that are unlawful under [§ 5(a)].'' Section 5(b) identifies four ''aggravated violations.'' What additional activities or practices, if any, should be treated as ''aggravated violations'' under the Act? Why should these activities or practices be considered ''aggravated violations''? How do these activities or practices contribute substantially to the proliferation of commercial e-mail that violates § 5(a)? Do these activities or practices have any use other than initiating e-mail that violates the Act?

2. Are there new technologies that have been developed or are in development that would contribute substantially to the proliferation of commercial e-mail that is unlawful under § 5(a)? If so, what are they? Should they be added to the list of ''aggravated violations'' under § 5(b)? Why or why not? What are the costs and benefits to industry in implementing procedures to overcome these technologies? What are the costs and benefits to consumers? Do these new technologies have any use other than initiating e-mail that violates the Act?

E. Issuing Regulations Implementing the Act

1. Section 3(16) of the Act defines when a person is a ''sender'' of commercial e-mail. The definition appears to contemplate that more than one person can be a ''sender'' of commercial e-mail; for example, an e-mail containing ads for four different companies. In such a case, who is the ''sender'' of the e-mail? What costs or burdens may be imposed on such entities if all are determined to be ''senders''? What costs or burdens may be imposed on consumers if only the entity originating the e-mail is determined to be the ''sender''? If a consumer previously has exercised his or her rights under § 5(a)(3) by ''opting out'' from receiving commercial e-mail from one of the companies advertised in the e-mail example above, has § 5(a)(4) of the Act been violated? If so, by whom?

2. Should the Commission use its authority in § 13 to issue regulations clarifying who meets the definition of ''sender'' under the Act? If so, how? If not, why not?

3. The Act defines ''initiate'' to mean originate or transmit, or procure the origination or transmission of, a message. In turn, the term ''procure'' means to pay, provide consideration, or ''induce'' a person to initiate a message on one's behalf.

a. Do ''forward-to-a-friend'' and similar marketing campaigns that rely on customers to refer or forward commercial e-mails to someone else fall within the parameters of ''inducing'' a person to initiate a message on behalf of someone else?

b. Are there different types of such ''forwarding'' marketing campaigns? What forms do these campaigns take?

c. Should these marketing campaigns have to comply with the Act? Why or why not? If so, who should be considered a person who ''initiates'' the message when one recipient forwards the message to another person? Who should be required to provide an ''opt-out'' mechanism for the message? Should each person who forwards the message be required to comply with the Act? Should the original sender of the message remain liable for compliance with the Act after the original recipient forwards the message to someone else? Why or why not?

d. Do the Act's requirements and prohibitions reach e-mail messages containing advertisements sent by using a Web site that urges or enables individuals to e-mail articles or other materials to friends or acquaintances? How, if at all, does the Act apply to this situation when recipients have previously ''opted-out'' of receiving e-mails from the advertised entities?

e. Should unsolicited commercial e-mail campaigns that rely on having customers refer or forward the e-mail to other parties be treated differently from other unsolicited commercial e-mail? Why or why not? If there are different types of these campaigns, should the different types be treated differently? Why or why not?

f. If referrals or forwarding of e-mails should be distinguished from other types of e-mail, how should they be distinguished? What, if any, restrictions should be placed on them? Why? What disclosures, if any, should be required? Why? Should the Commission distinguish between different types of ''forwarding'' campaigns? Why or why not?

g. What are the costs and benefits of forwarded commercial e-mail campaigns to consumers? To businesses? Are the costs and benefits to consumers and industry different for forwarded commercial e-mail campaigns than for other types of unsolicited commercial e-mail? Why or why not?

4. Section 5(a)(5)(A)(iii) requires the disclosure of ''a valid physical postal address of the sender'' in each commercial electronic mail message. How should this required disclosure be interpreted? Should a PO Box be considered a ''valid physical postal address''? Why or why not? Should a commercial mail drop be considered a ''valid physical postal address''? Why or why not?

5. Section 5(a)(1), regarding false or misleading transmission information, addresses information displayed in a message's ''from'' line. Is the Act sufficiently clear on what information may or may not be disclosed in the ''from'' line? What ''from'' line information should be considered acceptable under the Act? Why? If a sender's e-mail address does not, on its face, identify the sender by name, does that e-mail address comply with § 5(a)(1)?

F. National Do Not E-Mail Registry Report

1. The Commission is required to write a report setting forth a plan and timetable for establishing a nationwide marketing Do Not E-mail Registry, including an explanation of any practical, technical, security, privacy, enforceability, or other concerns regarding such a registry, and an explanation of how the registry would be applied with respect to children with email accounts. The Commission issued a Request for Information (''RFI'') to potential vendors seeking information on how an effective registry might be structured, and is also seeking information from the public in this Notice. What practical, technical, security, privacy, enforceability, and other concerns exist with respect to establishment of such a registry? Can these concerns be overcome so that a registry would be workable and effective? If so, what might be an appropriate plan and timetable for establishing a registry? Is such a registry a practical, efficient, and workable method of solving the spam problem? What are the relative costs and benefits?

2. How could such a registry be structured and applied to best protect children with email accounts? Could such a registry be effective as a means to protect children from inappropriate spam?

G. System for Rewarding Those Who Supply Information About CAN–SPAM Violations

1. What kinds of information would be most useful in facilitating enforcement of the Act? What kinds of information can the FTC reasonably expect to receive? Would such information likely be received in a form and manner that would make it useful in an enforcement action to prove violations of the Act? How would this information advance the Commission's ability to identify and locate people who violate the Act? How could a system for rewarding those who supply information about violations of the Act be structured? What are the relative costs and benefits?

2. What procedures would be necessary to determine who is ''the first person that identifies the person in violation of the Act, and supplies information that leads to the successful collection of a civil penalty by the Commission,'' as specified by the Act? What other procedures would be necessary to implement a reward system, *e.g.*, to resolve disputes among competitors seeking to be ''the first person that identifies the person in violation of the Act''?

3. Is the phrase ''identifies the person in violation of the Act'' sufficiently clear to provide a bright line with respect to who will be entitled to a reward? If not, how can deciding this issue be made more certain?

4. How would the prospect of receiving a portion of civil penalties collected by the FTC affect existing incentives for persons who have information about the identity of spammers to come forward with such information?

5. How would a reward system affect the behavior of ISPs and other industry participants with regard to initiating and conducting investigations of spammers, and other approaches to addressing unsolicited commercial email? Under what circumstances, if any, would ISPs and other industry participants likely submit information under a proposed reward system? What factors would be relevant to an ISP's choice whether to proceed under a reward system as opposed to proceeding under the private right of action for ISPs created by § 7(g) of the Act? Specifically, what kind of information would ISPs and other industry participants likely supply, and in what format? Would such information likely be received in a form and manner that would make it useful in an enforcement action to prove violations of the Act?

6. How successful have been the efforts of private entities or others to establish and operate reward programs similar to the one contemplated in the Act? Have such reward programs been successful in eliciting information otherwise unavailable to support enforcement or other legal action? Have such reward programs been successful in achieving the goal of reducing or deterring certain conduct?

7. How might the Commission implement ''procedures to minimize the burden of submitting a complaint to the Commission concerning violations of [the CAN–SPAM Act], including procedures to allow the electronic submission of complaints to the Commission,'' as provided by the Act?

H. Study of Effects of the CAN–SPAM Act

1. The Commission is required to write a report providing a detailed analysis of the effectiveness and enforcement of the provisions of the Act and the need (if any) for the Congress to modify such provisions. What measures of the effectiveness of the Act should the Commission consider?

2. Are there any developments likely to reach the market in the next two years that are likely to affect the effectiveness of the Act? How should the Commission monitor these developments?

3. This report must include an analysis and recommendations concerning how to address commercial email that originates in or is transmitted through or to facilities or computers in other nations, including initiatives or policy provisions that the Federal government could pursue through international negotiations, fora, organizations, or institutions. Given the ease of falsifying header information, how can the Commission determine the extent to which email originates in or is transmitted through or to facilities or computers in other nations? How should the Commission conduct this analysis?

4. This report must include an analysis and recommendations concerning options for protecting consumers, including children, from the receipt and viewing of commercial email that is obscene or pornographic. How should the Commission conduct this analysis?

I. Study of Subject Line Labeling

1. Prior to the enactment of the CAN–SPAM Act, many states required that unsolicited non-adult commercial email have an ''ADV'' label. How was this provision enforced by the States? What obstacles to enforcement did the States encounter? What, if any, limitations were found in these laws that the Commission should consider addressing in the required report regarding subject line labeling?

2. How effective is labeling?

3. Should the Commission recommend that all unsolicited non-adult commercial email be labeled ''ADV ''? Why or why not?

4. Would labeling, as part of a regime that includes other technological or law enforcement approaches, be an appropriate and effective tool to help control spam? Why or why not?

5. What are the costs and benefits to industry of labeling?

6. What are the costs and benefits to consumers of labeling?

7. If the Commission recommends that non-adult commercial email have an ''ADV'' label, should it also recommend that senders be allowed to provide additional explanatory information in the subject line; *e.g.*, ''ADV: Automobiles''? Why or why not?

J. Regulatory Flexibility Act

1. What burden to small business does the Act impose in the Act's requirements that certain disclosures be made in commercial electronic mail messages? How, if at all, may the burdens associated with required disclosures be minimized?

2. Does the Act impose any disparate impact on small businesses? If so, how may this disparate impact be minimized?

3. Describe and, where feasible, estimate the number of small entities to which the Act applies.

VII. Conclusion

The Commission will proceed from this ANPR with proposed rulemaking and drafting of required reports. Evaluation of comments submitted in response to this ANPR will comprise part of the Commission's rulemaking and report-drafting processes.

By direction of the Commission.

Donald S. Clark,

Secretary.

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Federal Register

Thursday,
March 11, 2004

Part VI

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 243
Reindeer in Alaska; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 243

RIN 1076–AE37

Reindeer in Alaska

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Indian Affairs is promulgating these regulations relating to the Alaska Native reindeer industry to meet the needs of Alaska Native Reindeer owners. These regulations would also apply to non-Natives who own, or want to own, reindeer in Alaska. They will provide Alaska Native reindeer owners, government officials, and those doing business with them, with procedures and policies for administration of the reindeer industry in Alaska.

This proposed rule also contains Paperwork Reduction Act information, which we are submitting to the Desk Officer for the Department of the Interior, OIRA/OMB for review and approval.

DATES: Comments on the proposed rule must be received on or before June 9, 2004. Comments on the information collection activities should be received close to April 12, 2004, in order to receive maximum consideration.

ADDRESSES: Public comments on this proposed rule should be addressed to: Alaska Regional Director, Attn: Warren Eastland, Bureau of Indian Affairs, P.O. Box 25520 (3rd floor, Federal Building), Juneau, Alaska 99802–5520.

You may submit comments concerning the information collection to the Desk Officer for the Department of the Interior, OIRA/OMB, by telefacsimile at (202) 395–6566 or by e-mail to: *OIRA_DOCKET@omb.eop.gov.*

Please send a copy of your comments on the information collection to the Bureau of Indian Affairs at the location specified in the **ADDRESSES** section. Note that requests for comments on the rule and the information collection are separate.

FOR FURTHER INFORMATION CONTACT: Warren Eastland, Wildlife Biologist, 907–586–7321.

SUPPLEMENTARY INFORMATION: These proposed regulations will have no impact on the reindeer grazing regulations administered by the Bureau of Land Management, which are found at 43 CFR part 4300.

This proposed rule is published by authority of the Secretary of the Interior granted under 25 U.S.C. 500k and delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Background

The Reindeer Act of September 1, 1937, 50 Stat. 900 (25 U.S.C. 500–500n) authorizes and directs the Secretary of the Interior to organize and manage the reindeer industry or business in Alaska in such a manner as to establish and maintain a complete and self-sustaining economy for the Natives of Alaska, and to encourage and develop Alaska Native activity and responsibility in all branches of the industry or business (25 U.S.C. 500 and 500f). To preserve the Native character of the reindeer industry in Alaska, the sale or transfer of Native or government-owned reindeer or reindeer products is allowed only under regulations to be developed by the Secretary (25 U.S.C. 500i).

For many years the Bureau of Indian Affairs (BIA) used an informal permit system in conjunction with the infrequent sale of live reindeer. Contracts for the sale of meat (and more recently velvet antler) were seldom reviewed. A May 23, 1979, opinion by the Assistant Regional Solicitor, Alaska, concluded that 25 U.S.C. 500i prohibited transfer of ownership of reindeer or reindeer products to anyone not an Alaska Native, unless such transfers were carried out in accordance with regulations adopted by the Secretary. A subsequent opinion concluded that, in the absence of such regulations, BIA officials had no legal authority to permit such sales. A primary purpose of the regulations being proposed is to prescribe the procedures by which valid transfers can be carried out. A secondary purpose is to ratify or validate past transfers that have occurred without benefit of authorizing regulations.

For better than five decades after enactment of the 1937 Reindeer Act, it was presumed that it established a government and Native monopoly on the ownership of live reindeer in Alaska. However, litigation more recently arose over the right of a non-Native to import into Alaska reindeer obtained from external sources. The Reindeer Herders Association challenged the Bureau of Indian Affairs' 1989 interpretation of the Act, which had found that non-Native importation of non-Alaska reindeer was not prohibited. Although that BIA interpretation was initially disfavored, in decisions by the Interior Board of Indian Appeals and the Federal District Court, it was eventually approved and reinstated by Circuit Court of Appeals in *Williams* v. *Babbitt*, 115 F.3d 657 (9th Cir. 1997), cert. denied, 523 U.S. 1117 (1998). Accordingly, it is necessary in these regulations to draw a distinction between Alaskan reindeer, owned by Alaska Natives or the United States Government, and imported reindeer, which are not descended from those present in Alaska at the time of the passage of the Reindeer Act. The former are subject to the restrictions on alienation imposed by 25 U.S.C. 500i, whereas the latter are not.

Although the BIA has for many years under the authority of 25 U.S.C. 500(g) administered a program under which government-owned reindeer were loaned to individual Native herders to help them establish or increase the size of their private herds, it has been determined that more formal guidelines for the operation of such loan program need not be provided for in these regulations. As a result of animals running off to join wild caribou herds that have invaded the grazing range of the domesticated herds, the substantial majority of the government-owned reindeer in the hands of Native borrowers have been lost. Because the BIA has no means to rebuild its stock of reindeer available for loan, it has been determined that it is not feasible to continue the reindeer loan program.

Procedural Requirements

Regulatory Planning and Review (Executive Order 12866)

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. OMB makes the final determination under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The scale of reindeer herding in Alaska is such that the value of the entire industry, including animals and infrastructure, is less than $100 million.

(b) This rule will not create inconsistencies with other agencies' actions. The Bureau of Indian Affairs is the sole agency tasked with administration of the Reindeer Act of 1937.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. There are no entitlements, grants, fees, loan programs or other obligations associated with the administration of the Reindeer Act of 1937.

(d) This rule will not raise novel, legal or policy issues. This rule merely

formalizes commonly accepted practice for the administration of the Bureau of Indian Affairs' responsibility under the Reindeer Act of 1937.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed regulations do not require any permitting or data gathering from Native reindeer owners, and only a very few non-Natives who wish to acquire Alaska reindeer will be affected, and then only by limited data gathering and not in an economic way.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

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 or more. The entire reindeer industry in Alaska, including the value of all the animals and the supporting infrastructure, does not add up to $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. These regulations only affect the administration of the Reindeer Act of 1937 and do not affect the value of, or prices received for Alaska reindeer.

(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. The administration of the Reindeer Act allows Alaska Natives to compete, should they wish, with other nations' reindeer industries, and protects the industry from illegal competition from non-Natives.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The administration of the Reindeer Act does not affect any governmental agency, but clarifies for Indian Reorganization Act councils the regulatory requirements for Alaska reindeer sales to Natives and non-Natives.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year; *i.e.*, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The entire reindeer industry in Alaska, including the value of all the animals and the supporting infrastructure, does not add up to $100 million.

Takings Implications (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. The proposed regulations do not involve taking issues. They do clarify under what conditions non-Natives may acquire Alaska reindeer, do not affect the ownership of Alaska reindeer by Natives, and are not expected to affect Alaska reindeer currently owned by non-Natives.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. The proposed regulations do not involve any aspect of Federal-State relations.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The proposed regulations do not involve court action, nor do they provide significant use of enforcement and judicial action.

Paperwork Reduction Act

The previous OMB Control Number, 1076–0047, covered the loan of reindeer to Alaska Natives who wished to start their own herd of reindeer or to improve their existing herd. The collection was allowed to expire because many reindeer ran off to join the caribou herds that traveled into the area where the federal reindeer were located. Therefore, a sufficient number of reindeer could not be maintained in the reindeer loan program to meet the minimum PRA transactions per year. This proposed regulation does require an information collection under the Paperwork Reduction Act. The information will be used to monitor the use and sale of Alaskan reindeer. The information we now require under the proposed regulations is limited to names and addresses of non-Natives who wish to possess Alaska reindeer and to reports of reindeer disposition and yearly reports. The reporting or application hourly burden varies from 5 minutes to 20 minutes, depending upon the kind of report or application used. The special use and sale reports are submitted annually to BIA staff. Researchers at the University of Alaska, who study the Alaska Native reindeer, submit their findings to BIA staff in lieu of a generic report. The table below explains the collection activity.

Form	Time per form (minutes)	Time × number of users	Estimate cost per form	Cost per form × no of users	Federal cost @ $32.75/hour
Special use permit display	10	2 × 10 = 20 minutes	$1.67	$3.34	$10.92
Reindeer sale permit	10	8 × 10 = 80 minutes	1.67	13.36	43.68
Annual report form	10	2 × 10 = 20 minutes	1.67	3.34	10.92
		8 × 5 = 40 minutes	0.84	6.72	21.84
Generic report	15–20	1 × 20 =20 minutes	3.34	3.34	10.92
Subtotals					
Permit		100 min		16.70	54.60
Report		80 min		13.40	43.68
Totals		180 = 3 hours		30.10	98.28

We invite your comments on the necessity of the information collection to perform agency functions adequately; whether the estimate of the public burden is accurate; whether the agency can improve the quality, utility, and

clarity of the information requested; if the use of automated, electronic, mechanical or other technological collection techniques would reduce the time needed for public response; and if our methodology and assumptions are valid.

Documentation has been prepared and submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, for review and approval of the information request.

Please note that we will not require nor sponsor a request for information, and you need not respond to a request that does not have a valid OMB Control Number.

We request comments on the information collection request. You may submit them to the location in the **ADDRESSES** section. Please note that these comments are separate from any comments on the rule. Your comments will be available for public review at the location in the **ADDRESSES** section. If you wish your name or address withheld, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowed by law.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment is not required. The proposed regulations do not constitute any irretrievable commitment of resources, nor will they permit environmental activities that are not otherwise regulated. The proposed regulations are merely administrative matters pertaining to the Reindeer Act of 1937.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. The proposed regulations affect only individuals or groups of individuals outside of tribal governments, and the restrictive measures contained affect only non-Natives.

Effects on the Nation's Energy Supply (Executive Order 13211)

In accordance with Executive Order 13211, this regulation does not have a significant effect on the nation's energy supply, distribution, or use. The proposed regulations pertain only to who and under what conditions may own Alaska reindeer. There are no energy issues involved.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example, **§ 243.2 What terms do I need to know?**)

(5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule?

(6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov*

Public Comment Solicitation

If you wish to comment on this proposed rule, you may mail or hand-deliver your written comments to the person listed in the **ADDRESSES** section of this document. Submissions by facsimile should be sent to (907) 586–7120. We cannot accept electronic submissions at this time. All written comments received by the date indicated in the **DATES** section of this document will be carefully assessed and fully considered prior to publication of a final rule.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record. We will honor the request to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law.

If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

List of Subjects in 25 CFR Part 243

Indians—Alaska natives, Livestock—Reindeer.

Dated: February 27, 2004.

David W. Anderson,

Assistant Secretary—Indian Affairs.

For the reasons discussed in the preamble, the Bureau of Indian Affairs proposes to add 25 CFR part 243 to read as follows:

PART 243—REINDEER IN ALASKA

Sec.
243.1 What is the purpose of this part?
243.2 What terms do I need to know?
243.3 Delegation of authority.
243.4 Who can own or possess Alaskan reindeer?
243.5 Who can own or possess imported reindeer, and what limitations apply?
243.6 Which sales or transfers do not require a permit?
243.7 How can a non-Native acquire live reindeer?
243.8 What penalties apply to violations of this part?
243.9 Who may inherit live Alaskan reindeer and by what means?
243.10 Information collection.
243.11 Are transfers of Alaskan reindeer that occurred before issuance of this part valid?
243.12 Are Alaskan reindeer trust property owned by the U.S. Government for the benefit of Alaska Natives?
243.13 Who may appeal an action under this part?

Authority: Sec. 12, 50 Stat. 902; 48 U.S.C. 250k. Interpret or apply sec. 3, 50 Stat. 900.

§ 243.1 What is the purpose of this part?

The Department's policy is to encourage and develop the activity and responsibility of Alaska Natives in all branches of the reindeer industry or business in Alaska, and to preserve the Native character of that industry or business. This part contains requirements governing acquiring and

transferring reindeer and reindeer products in Alaska.

§ 243.2 What terms do I need to know?

Act means the Reindeer Industry Act of September 1, 1937, 50 Stat. 900 (25 U.S.C. 500 *et seq.*), as amended.

Alaska Native means:

(1) Eskimos, Indians, and Aleuts inhabiting Alaska at the time of the Treaty of Cession of Alaska to the United States and their descendants; and

(2) Indians and Eskimos who, since the year 1867 and before September 1, 1937, migrated into Alaska from the Dominion of Canada, and their descendants currently living in Alaska.

Alaskan Reindeer means:

(1) All reindeer descended from those present in Alaska at the time of passage of the Act; and

(2) Any caribou introduced into animal husbandry or that have joined reindeer herds.

BIA means the Bureau of Indian Affairs.

Designee means the person assigned by the Alaska Regional Director to administer the reindeer program.

Imported reindeer means reindeer brought into Alaska from any region outside of Alaska by non-Native persons since passage of the Act. It does not include ''Alaskan'' reindeer sold live and shipped out of Alaska, or their descendants, that have been returned to Alaska.

Native reindeer organization means any corporation, association, or other organization, whether incorporated or not, composed solely of Alaska Natives, for the purpose of engaging in or promoting the reindeer industry.

Non-Native means a person who is not an Alaska Native.

Regional Director means the officer in charge of the Alaska Regional Office of the Bureau of Indian Affairs.

Reindeer products mean the meat, hide, antlers, or any other products derived from reindeer.

Transfer means the conveyance of ownership of reindeer or reindeer products, or any interest in them or interest in an Alaska Native reindeer organization, by any method.

We, us and *our* mean the Regional Director or the Director's designee.

§ 243.3 Delegation of authority.

The Secretary of the Interior has delegated authority under the Act through the Assistant Secretary ''Indian Affairs to the Alaska Regional Director of the Bureau of Indian Affairs. All claims of ownership of reindeer in Alaska, as required by the Act (section 500b), must be filed with the Regional Director or the Director's designee.

§ 243.4 Who can own or possess Alaskan reindeer?

(a) Only Alaska Natives, organizations of Alaska Natives, or the United States for the benefit of these Natives, can own Alaskan reindeer in Alaska.

(1) Any transfer not allowed by this part is not legal, and does not confer ownership or the right to keep Alaskan reindeer, reindeer products, or any interest in them.

(2) Anyone violating this part will forfeit their reindeer or reindeer products to the Federal Government.

(b) An Alaska Native or a Native reindeer organization may transfer reindeer that they own to other Alaska Natives or Native reindeer organizations without restriction, except as provided in this part.

(c) We may maintain reindeer for research projects, so long as the purpose of the research benefits the Native reindeer industry. We retain title to these reindeer and will determine their eventual disposition.

(d) A non-Native manager of Alaskan reindeer must, by the last day of September each year:

(1) Provide us a copy of the contract with the Native reindeer owner; and

(2) Provide us a written report of all Alaskan reindeer kept, born, died or transferred.

(e) We may permit possession of a limited number of Alaskan reindeer by a non-Native applicant under a Special Use Permit for Public Display.

(1) We can revoke this permit for cause.

(2) The permit will not allow the permit-holder to keep a breeding herd (*i.e.*, a herd that is capable of reproduction).

(3) The permit holder must report to us in writing by the last day of September each year on all reindeer held under this permit.

§ 243.5 Who can own or possess imported reindeer, and what limitations apply?

(a) Anyone, including non-Natives, may own imported reindeer in Alaska for any legitimate purpose, subject to State and Federal animal health laws and regulations.

(b) Imported reindeer must not be intermingled with, or be bred to, Alaskan reindeer without our written consent. Any offspring resulting from a mating with Alaskan reindeer are considered Alaskan reindeer and a non-Native owner may not maintain these reindeer alive in Alaska.

(c) This paragraph applies if a non-Native owner of imported reindeer in Alaska contracts with a Native reindeer owner to keep and manage the imported reindeer. The owner must:

(1) Distinguish the imported reindeer from the Alaskan reindeer by applying a distinctly different permanent earmark or tattoo on all imported reindeer; and

(2) Register the earmark or tattoo with the State Division of Agriculture book of livestock brand marks.

§ 243.6 Which sales or transfers do not require a permit?

The following transfers do not require a permit:

(a) Sale by Alaska Natives of dead reindeer or reindeer products to non-Natives; and

(b) Transfer of live reindeer between unrelated Alaska Natives.

§ 243.7 How can a non-Native acquire live reindeer?

If you are a non-Native who wants to acquire live Alaskan reindeer, you must apply to us in writing. We will either grant the request and issue a written permit valid for 90 days or reject the request and give our reasons in writing. Any transfer that we authorize is subject to the following conditions.

(a) The transfer must meet the requirements of the Act and this part.

(b) Within 30 days of transfer, you must either butcher the reindeer in Alaska or ship them out of Alaska. If you ship the reindeer out alive:

(1) You must comply with all Federal and State animal health regulations governing transfers and shipments; and

(2) The reindeer and their descendants must never be brought back to Alaska alive.

(c) Within 30 days of the transfer, you must report to us the actual number of reindeer transferred or slaughtered.

§ 243.8 What penalties apply to violations of this part?

If you are a non-Native transferee of live Alaskan reindeer who violates the provisions of this part, you are subject to the penalties in this section.

(a) Under 25 U.S.C. 500i, you can be fined up to $5,000 if you:

(1) Take possession of reindeer without a permit issued under § 243.7; or

(2) Do not abide by the terms of a permit issued under § 243.7 (including the requirement you slaughter or export the reindeer within 30 days and not bring them back alive into Alaska).

(b) Under 25 U.S.C. 500b, you are barred from asserting your title to the reindeer if you:

(1) Do not obtain from us a transfer permit and fully comply with its terms; or

(2) Fail to file with us a claim of title to reindeer within 30 days of acquiring them.

§ 243.9 Who may inherit live Alaskan reindeer and by what means?

(a) Privately owned live Alaskan reindeer may pass to the deceased owner's Native heirs by descent or devise.

(b) This paragraph applies if the final probate decree of the Department of the Interior, or the decision of any reviewing Federal court, identifies a non-Native as inheriting Alaskan reindeer. The non-Native may inherit, but must be allowed no more than 30 days from receiving the final determination of heirship to:

(1) Slaughter the reindeer;

(2) Apply for a permit to transfer the reindeer to an out-of-state transferee; or

(3) Apply for a permit to transfer ownership of the reindeer to one or more Alaska Native family members or other Alaska Native(s).

§ 243.10 Information collection.

The Department of the Interior collects information for the Reindeer Act to ensure compliance with its terms, to monitor the industry in Alaska, and to maintain a complete and self-sustaining economy for Alaska Natives (25 U.S.C. 500f). The collection of information as required in §§ 243.4, 243.5, 243.6, 243.7 and 243.8 has not been approved by the Office of Management and Budget under 44 U.S.C. 3507; a previously assigned clearance number 1076–0047 was allowed to expire. A request has been submitted to the Office of Management and Budget for review and reinstatement of this control number.

§ 243.11 Are transfers of Alaskan reindeer that occurred before issuance of this part valid?

All transfers of live Alaskan reindeer or reindeer products that were completed before the effective date of this part are hereby ratified and confirmed. This ratification does not extend to transfers that:

(a) Were fraudulent;

(b) Were made under duress;

(c) Did not result in payment of fair compensation to the Native transferer; or

(d) Would have been prohibited under §§ 243.6 or 243.8 of this part.

§ 243.12 Are Alaskan reindeer trust property owned by the U.S. Government for the benefit of Alaska Natives?

Except for reindeer maintained by BIA for research purposes or under other special use permits, all Alaskan reindeer are the private property of their Native owners subject only to:

(a) The restrictions of the Reindeer Act; and

(b) BIA's responsibility to ensure that any transfers of ownership are in accordance with this part.

§ 243.13 Who may appeal an action under this part?

Any interested party adversely affected by a decision under this part has the right of appeal as provided in 25 CFR part 2, and 43 CFR part 4, subpart D.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 743/P.L. 108–203

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