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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 69, No. 53
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

1 CFR Part 11

RIN 3095–AB35

Price Changes to Federal Register Publications

AGENCY: Administrative Committee of the Federal Register (ACFR).

ACTION: Final rule.

SUMMARY: The Administrative Committee of the Federal Register (ACFR) is prescribing the prices to be charged for the paper and microfiche editions of Federal Register publications. The price changes apply to the daily **Federal Register** (paper and microfiche editions), the Federal Register Index, the Code of Federal Regulations (CFR) (paper and microfiche editions), and the Weekly Compilation of Presidential Documents. The Administrative Committee has determined that it is necessary to increase prices to enable the Government Printing Office (GPO) to recover the full cost of producing and distributing Federal Register publications.

DATES: This final rule is effective April 19, 2004.

ADDRESSES: For access to supporting documents, go to *http://www.archives.gov/federal_register/acfr/docket.html.*

FOR FURTHER INFORMATION CONTACT: Michael White at (202) 741–6025 or *michael.white@nara.gov*.

SUPPLEMENTARY INFORMATION:

Background

Under the Federal Register Act (44 U.S.C. Chapter 15), the Administrative Committee of the Federal Register is responsible for prescribing the prices charged for Federal Register publications. These prices must be set according to the funding mechanisms authorized under law for the Federal Register program. By law, Federal Register publications are sold and distributed to the public by GPO's Superintendent of Documents. GPO receives no appropriation for the costs associated with producing Federal Register publications. Operating funds for the sales program are derived from subscribers and single copy buyers. The Administrative Committee periodically reviews data submitted by the Superintendent of Documents to determine whether subscription rates and single copy charges produce sufficient revenue to fully recover the Superintendent of Document's printing, handling, and distribution costs, including postal rate increases.

Over the past decade, the Administrative Committee has balanced two imperatives: the need to produce and price the paper editions of Federal Register publications in a fiscally sound manner, and the public benefit derived from making this essential regulatory information available to the public free of charge online via the GPO Access system (*http://www.gpoaccess.gov/nara*). Since 1994, when the Administrative Committee began providing online access to the **Federal Register**, the number of paid subscriptions has declined by 85 percent. The decline in paper subscription revenue far exceeds the savings realized from producing fewer paper copies. Over the same time period in which sales of Federal Register publications have fallen, use of online Federal Register publications through GPO Access has expanded rapidly. Information retrievals from the online edition of the **Federal Register** grew from just under 15 million documents in calendar year 1996 to over 68 million documents downloaded in calendar year 2002. Over the same period, information retrievals from the online edition of the CFR grew from about 725,000 documents to more than 87 million documents downloaded. At the same time, there are still some subscribers who prefer to pay for the convenience of receiving bound, paper editions for their libraries and internal distribution systems. The price of these paper publications must reflect the economic reality of producing and distributing them.

While the Federal Register Act does not provide any specific guidelines on the prices to be charged for Federal Register publications, the longstanding policy of the Administrative Committee is that the program should be operated on a break-even basis. Due to fluctuations in subscriptions and single copy buying patterns, some temporary funding shortfalls may be unavoidable. But it is implicit in the statutory scheme that the Federal Register sales program may not be operated over the long term with a built-in deficit caused by a known insufficiency of funds. GPO's current analysis indicates that the portion of its revolving fund dedicated to the Federal Register sales program has been depleted to the point that prices should be raised to support the program in the future.

To determine current costs and prepare a price schedule, the Superintendent of Documents conducted an in-depth study of actual costs from prior years and made conservative estimates of future costs. This final rule takes into account GPO's actual production and distribution costs since 2001 and projected costs for fiscal year 2004. The pricing analysis includes GPO's recent cost-cutting initiatives to streamline and improve its operations. Specific actions to cut costs that have been taken or are presently underway include: Reducing personnel expenses through an employee buyout plan; reorganizing the Superintendent of Documents organization and operations; consolidating distribution facilities; and closing GPO Bookstores. GPO has also reevaluated and subsequently reduced estimated handling charges as they apply to Federal Register products. The new handling charges of $1.46 per copy for the **Federal Register** (down from $2.39) and $1.59 for the CFR (down from $2.39) were factored into the pricing analysis.

Based on all the information available, it has been determined that price adjustments should be made to certain publications to accurately reflect the current costs of production and distribution, and thereby avoid running a deficit. A proposed rule was published on December 17, 2003, at 68 FR 70191. In the rulemaking analysis, the Administrative Committee projected that adopting the proposed pricing schedule would enable the Federal Register program to achieve full cost

recovery, and invited public comment on the proposed pricing schedule. No comments were received.

In the past, ACFR price regulations have generally included postage in the prices listed. In this final rule, postage is excluded from the stated prices, except for single issues of certain editions, since postal rate making decisions and the timing of increases are separately determined by the United States Postal Service. Therefore, the prevailing postal rates will be applied to orders, based on the method of delivery requested by customers. The prices for single issues of the **Federal Register** (paper and microfiche) and the Weekly Compilation of Presidential Documents, and single volumes of the CFR on microfiche continue to include postage because the cost of delivery is only a small component of the total cost.

This final rule increases the subscription rates for the paper editions of the daily **Federal Register**, the **Federal Register** Index, the Code of Federal Regulations (CFR) and the Weekly Compilation of Presidential Documents. The cost to customers for the LSA (List of CFR Sections Affected), with postage calculated at the current periodical rate, is unchanged. The subscription rates and the single copy prices of the microfiche editions of the daily **Federal Register** and CFR also increase slightly. In addition, the Administrative Committee is prescribing a multi-tiered price schedule for single copies of the **Federal Register** to account for the true cost of publishing issues of varying size.

The following figures state the percentage of increase for Federal Register publications. To be consistent with past analyses, the calculation includes the current basic postal rates applicable to each publication. Under this analysis, it is necessary to increase the price of the paper **Federal Register** subscription by 21 percent, and the price of the paper CFR subscription by 12 percent. The average increase for all paper **Federal Register** subscriptions amounts to 16 percent. The overall price change for paper and microfiche editions combined amounts to a 14 percent increase. The increases are primarily attributable to higher labor expenses, paper costs, and a substantial decline in sales of printed publications, causing upward pressure on the average cost per subscription. Pricing for the microfiche editions of the **Federal Register** and the CFR are determined through a competitive bidding process.

While the rate increases discussed in this rulemaking will affect subscribers of the paper and microfiche editions, the success of our online publications demonstrates that the Federal Register system is fulfilling its mission to provide the broader public with essential information on the functions, actions, and regulatory requirements of the Federal government. The Office of the Federal Register (OFR) and GPO are constantly engaged in efforts to improve the quality of their online publications, including investments in new technology applications that will enhance e-government services to the public. In early 2003, the OFR and GPO helped the Environmental Protection Agency and other agency partners launch Regulations.gov as part of the President's eRulemaking initiative. OFR and GPO created a one-stop regulatory clearinghouse for this application to enhance public participation in the rulemaking process (*see http://www.regulations.gov*). This system is based, in large part, on OFR/GPO production systems and online Federal Register publications. More than 2 million users have accessed proposed and final regulations through this new resource, and the system has garnered a number of awards from various e-Government organizations. In addition, GPO, in consultation with OFR, recently completed an effort to thoroughly rewrite and reorganize its **Federal Register** and CFR Web pages to improve the user experience. And GPO is also actively engaged in acquiring a new search and retrieval engine for Federal Register databases, including the e-CFR, which is a prototype for a currently updated, online version of the CFR (*http://www.gpoaccess.gov/ecfr*). For members of the public who prefer to read the printed editions, GPO continues to provide free access to Federal Register publications at Federal Depository libraries located throughout the nation.

The Amendments

The increased prices for Federal Register publications are reflected in amendments to 1 CFR part 11. The following rates are effective 30 days after publication of this final rule. The annual subscription rate for the daily **Federal Register** paper edition is $749. For a combined **Federal Register**, **Federal Register** Index and LSA (List of CFR Sections Affected) subscription, the price is $808. The price of a single copy of the daily **Federal Register** is based on the number of pages: $11 for an issue less than 200 pages; $22 for an issue between 200 and 400 pages; and $33 for an issue with more than 400 pages. The annual subscription price of the microfiche edition of the **Federal Register**, which includes the **Federal Register** Index and LSA, is $165. The price of a single copy of the daily **Federal Register** microfiche edition is $3. The annual price for the **Federal Register** Index is $29. The annual subscription price for the monthly LSA is $30. The annual subscription rate for a full set of CFR volumes is $1,019 for the paper edition and $247 for the microfiche edition. The price of a single volume of the CFR microfiche edition is $4. The annual subscription rate for the Weekly Compilation of Presidential Documents is $113. The price of a single copy of the Weekly Compilation of Presidential Documents is $5.

Regulatory Analyses

Executive Order 12866

This final rule has been drafted in accordance with Executive Order 12866, section 1(b), ''Principles of Regulation.'' This rulemaking is not a significant regulatory action, as defined under section 3(f) of Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply to rate increases necessary to recover the costs to the government of printing and distributing Federal Register publications. This final rule will not have a significant impact on small entities because it does not impose any substantive requirements, and any increased costs may be avoided by accessing Federal Register publications on the Internet via the free GPO Access service. In addition, Federal depository libraries located throughout the nation provide free access to the bound paper editions or microfiche editions of Federal Register publications, as well as free use of computers for access to the online editions.

Federalism

This final rule has no federalism implications under Executive Order 13132. It does not impose compliance costs on State or local government or preempt State law.

Congressional Review

This rule is not a major rule as defined by 5 U.S.C. 804(2). A rule report, including a copy of this final rule, will be submitted to each House of the Congress and to the Comptroller General of the United States as required under the congressional review provisions of the Small Business Regulatory Enforcement Fairness Act of 1986.

List of Subjects in 1 CFR Part 11

Code of Federal Regulations, **Federal Register**, Government publications,

Weekly Compilation of Presidential Documents.

■ For the reasons discussed in the preamble, the Administrative Committee of the Federal Register, with the approval of the Archivist of the United States and the Attorney General, is amending part 11 of chapter I of title 1 of the Code of Federal Regulations as set forth below:

PART 11—SUBSCRIPTIONS

■ 1. The authority citation for part 11 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1958 Comp., p. 189.

■ 2. In § 11.2, revise paragraph (a) to read as follows:

§ 11.2 Federal Register.

(a) The subscription price for the paper edition of the daily **Federal Register** is $749 per year. A combined subscription to the daily **Federal Register**, the monthly **Federal Register** Index, and the monthly LSA (List of CFR Sections Affected) is $808 per year for the paper edition, or $165 per year for the microfiche edition. Six-month subscriptions for the paper and microfiche editions are also available at one-half the annual rate. Those prices exclude postage. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage.

* * * * *

■ 3. In § 11.3, revise paragraph (a) to read as follows:

§ 11.3 Code of Federal Regulations.

(a) The subscription price for a complete set of the Code of Federal Regulations is $1,019 per year for the bound, paper edition, or $247 per year for the microfiche edition. Those prices exclude postage. The prevailing postal rates will be applied to orders according to the delivery method requested. The Government Printing Office sells individual volumes of the paper edition of the Code of Federal Regulations at prices determined by the Superintendent of Documents under the general direction of the Administrative Committee. The price of a single volume of the microfiche edition is $4 per copy, including postage.

* * * * *

■ 4. In § 11.6, revise paragraph (a) to read as follows:

§ 11.6 Weekly Compilation of Presidential Documents.

(a) The subscription price for the paper edition of the Weekly Compilation of Presidential Documents is $113 per year, excluding postage. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of an individual copy is $5, including postage.

* * * * *

■ 5. Revise § 11.7 to read as follows:

§ 11.7 Federal Register Index.

The annual subscription price for the monthly **Federal Register** Index, purchased separately, in paper form, is $29. The price excludes postage. The prevailing postal rates will be applied to orders according to the delivery method requested.

■ 6. Revise § 11.8 to read as follows:

§ 11.8 LSA (List of CFR Sections Affected).

The annual subscription price for the monthly LSA (List of CFR Sections Affected), purchased separately, in paper form, is $30. The price excludes postage. The prevailing postal rates will be applied to orders according to the delivery method requested.

John W. Carlin,

Chairman, Administrative Committee of the Federal Register.

Bruce R. James,

Member, Administrative Committee of the Federal Register.

Rosemary Hart,

Member, Administrative Committee of the Federal Register.

Approved by:

James B. Comey,

Deputy Attorney General.

John W. Carlin,

Archivist of the United States.

[FR Doc. 04–6198 Filed 3–17–04; 8:45 am]

BILLING CODE 1505–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–56–AD; Amendment 39–13525; AD 2004–05–30]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Trent 500 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Rolls-Royce plc (RR) RB211–Trent 500 series turbofan engines. This AD requires revising the Time Limits Manual for RR RB211 Trent 500 series turbofan engines. These revisions include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This AD results from the need to require enhanced inspection of selected critical life-limited parts of RR Trent 500 series turbofan engines. We are issuing this AD to prevent failure of critical life-limited rotating engine parts, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective April 2, 2004.

We must receive any comments on this AD by May 17, 2004.

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

- By mail: the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–56–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A recent FAA study analyzing 15 years of accident data for transport category airplanes identified several root causes for a failure mode that can result in

serious safety hazards to transport category airplanes. This study identified uncontained failure of critical life-limited rotating engine parts as the leading engine-related safety hazard to airplanes. Uncontained engine failures have resulted from undetected cracks in rotating parts that started and grew to failure. Cracks can start from causes such as unintended excessive stress from the original design, or they may start from stresses induced from material flaws, handling, or damage from machining operations. The failure of a rotating part can present a significant safety hazard to the airplane by release of high-energy fragments that could injure passengers or crew by penetration of the cabin, damage flight control surfaces, sever flammable fluid lines, or otherwise compromise the airworthiness of the airplane.

Based on these findings, the FAA, with the concurrence of the Civil Aviation Authority (CAA), which is the Airworthiness Authority for the United Kingdom (U.K.), has developed an intervention strategy to significantly reduce uncontained engine failures. This intervention strategy was developed after consultation with industry and will be used as a model for future initiatives. The intervention strategy is to conduct enhanced, nondestructive inspections of rotating parts, which could most likely result in a safety hazard to the airplane in the event of a part fracture. We are considering the need for additional rulemaking. We might issue future ADs to introduce additional intervention strategies to further reduce or eliminate uncontained engine failures.

Properly focused enhanced inspections require identification of the parts whose failure presents the highest safety hazard to the airplane, identifying the most critical features to inspect on these parts, and utilizing inspection procedures and techniques that improve crack detection. The CAA, with close cooperation of RR, has completed a detailed analysis that identifies the most safety significant parts and features, and the most appropriate inspection methods.

Critical life-limited high-energy rotating parts are currently subject to some form of recommended crack inspection when exposed during engine maintenance or disassembly. The inspections currently recommended by the manufacturer will become mandatory for those parts listed in the compliance section as a result of this AD. Furthermore, we intend that additional mandatory enhanced inspections resulting from this AD will serve as an adjunct to the existing inspections. We have determined that the enhanced inspections will significantly improve the probability of crack detection on disassembled parts during maintenance. All mandatory inspections must be conducted in accordance with detailed inspection procedures prescribed in the manufacturer's Engine Manual.

Additionally, this AD will:

- Allow air carriers that operate under the provisions of 14 CFR part 121 with an FAA-approved continuous airworthiness maintenance program, and maintenance facilities to verify completion of the enhanced inspections.
- Allow the air carrier or maintenance facility to retain the maintenance records that include the inspections resulting from this AD, if the records include the date and signature of the person who performed the maintenance action.
- Require retaining the records with the maintenance records of the part, engine module, or engine until the task is repeated.
- Establish a method of record preservation and retrieval typically used in existing continuous airworthiness maintenance programs.
- Require adding instructions in an air carrier's maintenance manual on how to implement and integrate this record preservation and retrieval system into the air carrier's record keeping system.

For engines or engine modules that are approved for return to service by an authorized FAA-certificated entity, and that are acquired by an operator after the effective date of the AD, you will not need to perform the mandatory enhanced inspections until the next piece-part opportunity. For example, you will not have to disassemble to piece-part level, an engine or module returned to service by an FAA-certificated facility simply because that engine or module was previously operated by an entity not required to comply with this AD. Furthermore, we intend that operators perform the enhanced inspections of these parts at the next piece-part opportunity after the initial acquisition, installation, and removal of the part after the effective date of this AD. For piece parts not approved for return to service before the effective date of this AD, the AD requires that you perform the mandatory enhanced inspections before approval of those parts for return to service. The AD allows installation of piece parts approved for return to service before the effective date of this AD. However, the AD requires an enhanced inspection at the next piece-part opportunity.

This AD requires, within the next 40 days after the effective date of this AD, revisions to the Time Limits Manual.

FAA's Determination and Requirements of This AD

Although no airplanes that are registered in the United States use these engines, the possibility exists that the engines could be used on airplanes that are registered in the United States in the future. The unsafe condition described previously is likely to exist or develop on other RR RB211 Trent 500 series turbofan engines of the same type design. We are issuing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this engine model, notice and opportunity for public comment before issuing this AD are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47998, July 22, 2002), which governs our AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. 2003–NE–56–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a verbal communication, and that contact relates to a substantive part

of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. *See* **ADDRESSES** for the location.

Regulatory Findings

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

For the reasons discussed above, I certify that the 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. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2003–NE–56–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2004–05–30 Rolls-Royce plc: Amendment 39–13525. Docket No. 2003–NE–56–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 2, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc (RR) Trent 500 series turbofan engines. These engines are installed on, but not limited to, Airbus A340 series airplanes.

Unsafe Condition

(d) This AD results from the need to require enhanced inspection of selected critical life-limited parts of RR Trent 500 series turbofan engines. We are issuing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

(f) Within the next 40 days after the effective date of this AD, revise the Time Limits Manual (TLM), and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

''GROUP A PARTS MANDATORY INSPECTION

B. Inspections referred to as 'Focus Inspect' in the applicable Engine Manual inspection Task are mandatory inspections for the components given below, when the conditions that follow are satisfied:

(1) When the component has been completely disassembled to piece part level as given in the applicable disassembly procedures contained in the Engine Manual; and

(2) The part has more than 100 recorded flight cycles in operation since the last piece part inspection; or

(3) The component removal was for damage or a cause directly related to its removal; or

(4) Where serviceable used components, for which the inspection history is not fully known, are to be used again.

C. The list of Group A Parts is specified below:

Part nomenclature	Part No.	Inspected per overhaul manual task
Low Pressure Compressor Rotor Disk	All	72–31–16–200–801
Low Pressure Compressor Rotor Shaft	All	72–31–20–200–801
Intermediate Pressure Compressor Rotor Shaft	All	72–32–31–200–801
Intermediate Pressure Rear Shaft	All	72–33–21–200–801
High Pressure Compressor Stage 1 to 4 Rotor Disks Shaft	All	72–41–31–200–803
High Pressure Compressor Stage 5 & 6 Disks and Cone	All	72–41–31–200–801
High Pressure Turbine Rotor Disk	All	72–41–51–200–801
High Pressure Turbine Front Coverplate	All	72–41–51–200–806
Intermediate Pressure Turbine Rotor Disk	All	72–51–31–200–801
Intermediate Pressure Turbine Rotor Shaft	All	72–51–33–200–801
Low Pressure Turbine Stage 1 Rotor Disk	All	72–52–31–200–801
Low Pressure Turbine Stage 2 Rotor Disk	All	72–52–31–200–802
Low Pressure Turbine Stage 3 Rotor Disk	All	72–52–31–200–803
Low Pressure Turbine Stage 4 Rotor Disk	All	72–52–31–200–804
Low Pressure Turbine Stage 5 Rotor Disk	All	72–52–31–200–805
Low Pressure Turbine Rotor Shaft	All	72–52–33–200–801''

Alternative Methods of Compliance

(g) You must perform these mandatory inspections using the TLM and the applicable Engine Manual unless you receive approval to use an alternative method of compliance under paragraph (h) of this AD. Section 43.16 of the Federal Aviation Regulations (14 CFR 43.16) may not be used to approve alternative methods of compliance or adjustments to the times in which these inspections must be performed.

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

Maintaining Records of the Mandatory Inspections

(i) You have met the requirements of this AD by using a TLM changed as specified in paragraph (f) of this AD, and, for air carriers operating under part 121 of the Federal Aviation Regulations (14 CFR part 121), by modifying your continuous airworthiness maintenance plan to reflect those changes. You must maintain records of the mandatory inspections that result from those changes to the TLM according to the regulations governing your operation. You do not need to record each piece-part inspection as compliance to this AD. For air carriers operating under part 121, you may use either the system established to comply with section 121.369 or use an alternative system that your principal maintenance inspector has accepted if that alternative system:

(1) Includes a method for preserving and retrieving the records of the inspections resulting from this AD; and

(2) Meets the requirements of section 121.369(c); and

(3) Maintains the records either indefinitely or until the work is repeated.

(j) These record keeping requirements apply only to the records used to document the mandatory inspections required as a result of revising the Time Limits Manual as specified in paragraph (f) of this AD, and do not alter or amend the record keeping requirements for any other AD or regulatory requirement.

Related Information

(k) CAA airworthiness directive G–2003–0005, dated September 18, 2003, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on March 5, 2004.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–5620 Filed 3–17–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–18–AD; Amendment 39–13528; AD 2004–06–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD); applicable to certain Airbus Model A319, A320, and A321 series airplanes; that requires replacing the lower guide rod fittings at the rear passenger doors with improved fittings. This action is necessary to prevent failure of a lower guide rod fitting, which could cause a rear passenger door to jam during opening, delaying an emergency evacuation and resulting in injury to passengers or crew members. This action is intended to address the identified unsafe condition.

DATES: Effective April 22, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 22, 2004.

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes, was published in the **Federal Register** on December 17, 2003 (68 FR 70213). That action proposed to require replacing the upper guide rod fittings at the rear passenger doors with improved fittings.

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.

Support for the Proposed AD

Three commenters support the proposed AD.

Request To Revise Identification of Affected Parts

One commenter requests that the FAA revise the proposed AD to refer to the correct parts to be replaced. The commenter notes that, while the proposed AD states that it is the upper guide rod fitting on each rear passenger door that must be replaced, Airbus Service Bulletin A320–53–1154, Revision 2, dated March 7, 2003 (which is the applicable source of service information referenced in the proposed AD), refers to the lower guide rod fitting.

We concur with the commenter's request to revise this AD to refer to the lower guide rod fitting instead of the upper. The references to ''upper guide rod fitting'' in the proposed AD are consistent with the terminology in French airworthiness directive 2001–634(B), dated December 26, 2001, which refers to the original issue of the service bulletin, Airbus Service Bulletin A320–53–1154, dated July 12, 2001. The original issue of the service bulletin erroneously referred to the upper guide rod fitting instead of the lower. We have revised the preamble and body of this final rule to contain the correct terminology. Also, we have revised paragraph (b) of this AD to clarify that replacements, of the lower guide rod fitting only, accomplished per previous revisions of the service bulletin are acceptable for compliance with this AD. We find that these changes do not increase the scope of the AD because the service information referenced in the proposed AD, Airbus Service Bulletin A320–53–1154, Revision 2, contains the correct instructions for accomplishing the required actions.

Request To Extend Compliance Time

One commenter requests that we revise the compliance time for the requirements of this AD from 22 months to 5 years, and suggests that we add repetitive inspections for cracking of the lower guide arm fittings as an interim action until the modification is accomplished. The commenter would like to incorporate this modification into the 5-year heavy maintenance visit for its fleet, and extending the compliance time for the proposed AD would accommodate the commenter's schedule. The commenter states that repetitive inspections for cracking at intervals not to exceed 600 flight hours, and accomplishment of the replacement of the lower guide arm fittings within 5 years, would significantly reduce the possibility of door failure and would not compromise safety.

We do not concur with the commenter's request. The operator did not submit appropriate inspection procedures to justify that its request would adequately ensure an acceptable level of safety. An affected operator may request approval of an alternative method of compliance or adjustment of the compliance time for this AD if the

operator also presents data that justify that an acceptable level of safety will be maintained. Paragraph (c) of this AD specifies the office that may approve such requests. We have made no change to the final rule in this regard.

Conclusion

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

Cost Impact

The FAA estimates that 440 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will cost approximately $2,200 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,254,000, or $2,850 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–06–02 Airbus: Amendment 39–13528. Docket 2002-NM–18–AD.

Applicability: Model A319, A320, and A321 series airplanes; certificated in any category; on which Airbus Modification 30821 has not been accomplished.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a lower guide rod fitting, which could cause a rear passenger door to jam during opening, delaying an emergency evacuation and resulting in injury to passengers or crew members, accomplish the following:

Replacement

(a) Within 22 months after the effective date of this AD, replace the lower guide rod fitting on each rear passenger door with an improved fitting by doing all actions in and per the Accomplishment Instructions of Airbus Service Bulletin A320–53–1154, Revision 2, dated March 7, 2003.

Replacements Accomplished Previously

(b) Replacements of the lower guide rod fitting accomplished before the effective date of this AD per the Accomplishment Instructions of Airbus Service Bulletin A320–53–1154, dated July 12, 2001; or Revision 1, dated August 28, 2002; are acceptable for compliance with the corresponding action required by this AD.

Alternative Methods of Compliance

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

Incorporation by Reference

(d) Unless otherwise specified in this AD, the actions shall be done in accordance with Airbus Service Bulletin A320–53–1154, Revision 2, dated March 7, 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 Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 1: The subject of this AD is addressed in French airworthiness directive 2001–634(B), dated December 26, 2001.

Effective Date

(e) This amendment becomes effective on April 22, 2004.

Issued in Renton, Washington, on March 9, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–5847 Filed 3–17–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–239–AD; Amendment 39–13529; AD 2004–06–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that requires checking the identification plate on the ram air turbine (RAT) actuator and re-identifying the actuator or replacing the actuator with one which has been cleaned and tested by its manufacturer. This action is necessary to prevent jamming of the RAT actuator in an emergency which requires deployment of the RAT, and consequent loss of hydraulic and electrical power in the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective April 22, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of April 22, 2004.

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes was published in the **Federal Register** on December 17, 2003 (68 FR 70210). That action proposed to require checking the identification plate on the ram air turbine (RAT) actuator and re-identifying the actuator or replacing the actuator with one which has been cleaned and tested by its manufacturer.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 195 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. There would be no cost for required parts. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $63,375, or $325 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–06–03 Airbus: Amendment 39–13529. Docket 2001–NM–239–AD.

Applicability: Model A320 series airplanes which have received modification 27189; Model A319 series airplanes; and Model A321 series airplanes, provided that none has received modification 30978 or 28413; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the ram air turbine (RAT) actuator in an emergency which requires deployment of the RAT, and consequent loss of hydraulic and electrical power in the airplane, accomplish the following:

Extension of RAT Actuator

(a) Within 31 months after the effective date of this AD: Extend the existing RAT actuator, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–29–1098, Revision 02, dated February 20, 2003.

Determination of Identification of RAT Actuator

(b) Immediately after accomplishment of paragraph (a) of this AD: Check the identification plate on the RAT actuator to determine the part number (P/N), the serial number, and whether there is a notation in the Amend Block, in accordance with the Accomplishment Instructions of Hamilton Sundstrand/Arkwin Industries Service Bulletin ERPS08A–29–2, dated February 22, 2001.

Retraction, Re-identification, or Replacement of RAT Actuator

(c) Depending upon the identification of the RAT actuator, accomplish the follow-on action indicated in Table 1 of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–29–1098, Revision 02, dated February 20, 2003.

TABLE 1.—FOLLOW-ON ACTIONS

If the P/N is—	And the Amend Block is marked with an "A"—	And the serial number is—	Then—
764711A	N/A	N/A	No further action is required.
764711	No	N/A	Prior to further flight, remove the RAT actuator and replace it with one which has been cleaned, tested and re- identified by its manufacturer.

TABLE 1.—FOLLOW-ON ACTIONS—Continued

If the P/N is—	And the Amend Block is marked with an "A"—	And the serial number is—	Then—
764711	Yes	0868–0889 ...	Prior to further flight, remove the RAT actuator and replace it with one which has been cleaned, tested and re- identified by its manufacturer.
764711	Yes	Other than 0868–0889.	Prior to further flight, reidentify the RAT actuator, in accordance with paragraph 2.G. of the Accomplishment Instructions of Hamilton Sundstrand/Arkwin Industries Service Bulletin ERPS08A–29–2, dated February 22, 2001.

Parts Installation

(d) *As of the effective date of this AD:* No person may install an Arkwin Industries RAT actuator having P/N 764711 on any Airbus Model A319, A320, or A321 airplane, unless it is in compliance with this AD.

Incorporation by Reference

(e) The actions shall be done in accordance with Airbus Service Bulletin A320–29–1098, Revision 02, dated February 20, 2003; and Hamilton Sundstrand/Arkwin Industries Service Bulletin ERPS08A–29–2, dated February 22, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 1: The subject of this AD is addressed in French airworthiness directive 2001–236(B) R1, dated December 24, 2002.

Effective Date

(f) This amendment becomes effective on April 22, 2004.

Issued in Renton, Washington, on March 9, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–5848 Filed 3–17–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 745 and 774

[Docket No. 040220063–4063–01]

RIN 0694–AC96

Amendments to the Export Administration Regulations (EAR) Implementing the Understandings Reached at the June 2003 Australia Group (AG) Plenary Meeting and a Subsequent AG Intersessional Decision on Certain Animal Pathogens

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is publishing this final rule to describe the understandings reached at the June 2003 plenary meeting of the Australia Group (AG) and to amend the Export Administration Regulations (EAR), as needed, to implement these AG understandings. Specifically, this final rule amends the EAR by adding twelve new viruses and two new bacteria to the list of AG-controlled human and zoonotic pathogens and toxins described on the Commerce Control List (CCL).

This rule also amends the EAR to implement an AG intersessional decision, which was adopted after the June 2003 AG plenary meeting, by adding two viruses to the list of AG-controlled animal pathogens described on the CCL.

Finally, this rule updates the list of countries that are currently States Parties to the Chemical Weapons Convention (CWC) by adding nine countries that recently became States Parties: Afghanistan, Belize, Cape Verde, Kyrgyzstan, Libya, Sao Tome and Principe, Timor Leste, Tonga, and Tuvalu.

DATES: This rule is effective March 18, 2004.

ADDRESSES: Written comments should be sent to Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, Room 2705, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Douglas Brown, Office of Nonproliferation Controls and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–7900.

SUPPLEMENTARY INFORMATION:

Background

A. Revisions to the EAR Based on the June 2003 Plenary Meeting of the Australia Group

The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to implement the understandings reached at the annual plenary meeting of the Australia Group (AG) that was held in Paris on June 2–5, 2003. The Australia Group is a multilateral forum, consisting of 33 participating countries, that maintains export controls on a list of chemicals, biological agents, and related equipment and technology that could be used in a chemical or biological weapons program. The AG periodically reviews items on its control list to enhance the effectiveness of participating governments' national controls and to achieve greater harmonization among these controls.

The understandings reached at the June 2003 plenary meeting resulted in multiple additions to the list of biological agents controlled by the AG. This final rule implements these changes by amending the EAR to add twelve new viruses and two new bacteria to the list of AG-controlled human and zoonotic pathogens and toxins described in Export Control Classification Number (ECCN) 1C351 on the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR).

Specifically, this rule adds the following twelve viruses to the list of AG-controlled viruses described in ECCN 1C351.a on the CCL: Kyasanur Forest virus, Louping ill virus, Murray Valley encephalitis virus, Omsk haemorrhagic fever virus, Oropouche

virus, Powassan virus, Rocio virus, St. Louis encephalitis virus, Hendra virus (Equine morbillivirus), South American haemorrhagic fever (Sabia, Flexal, Guanarito), Pulmonary and renal syndrome-haemorrhagic fever viruses (Seoul, Dobrava, Puumala, Sin Nombre), and Nipah virus. These AG-listed viruses, along with all other items controlled by ECCN 1C351, require a license for export or reexport to all destinations, worldwide.

In addition, this rule adds the following two bacteria to the list of AG-controlled bacteria in ECCN 1C351.c on the CCL: Clostridium perfringens, epsilon toxin producing types and Enterohaemorrhagic Escherichia coli, serotype O157 and other verotoxin producing serotypes. ECCN 1C351.c, as revised by this rule, does not control Clostridium perfringens strains other than epsilon toxin producing types, since the other strains can be used as positive control cultures for food testing and quality control.

In conjunction with the additions to the list of AG-controlled bacteria in ECCN 1C351.c, this rule amends the Technical Note following ECCN 1C353.a to clarify that ECCN 1C353 does not control nucleic acid sequences associated with the pathogenicity of enterohaemorrhagic Escherichia coli, serotype O157 and other verotoxin producing strains, except those nucleic acid sequences that contain coding for the verotoxin or its sub-units.

B. Revisions to the EAR Based on an Intersessional Decision by the Australia Group.

BIS also is amending the EAR to implement an AG intersessional decision on animal pathogens that was adopted after the June 2003 AG plenary meeting. Specifically, this rule adds the following two viruses to the list of AG-controlled animal pathogens described in ECCN 1C352 on the CCL: Lumpy skin disease virus and African horse sickness virus.

C. Revisions to the EAR Based on the Addition of New States Parties to the Chemical Weapons Convention (CWC).

This rule revises Supplement No. 2 to Part 745 of the EAR (titled ''States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction'') by adding the names of nine countries that have recently become States Parties to the CWC (*i.e.*, Afghanistan, Belize, Cape Verde, Kyrgyzstan, Libya, Sao Tome and Principe, Timor Leste, Tonga, and Tuvalu).

Savings Clause

Shipments of items removed from license exception eligibility or eligibility for export without a license as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on March 18, 2004, pursuant to actual orders for export to a foreign destination, may proceed to that destination under the previous license exception eligibility or without a license so long as they have been exported from the United States before April 19, 2004. Any such items not actually exported before midnight, on April 19, 2004, require a license in accordance with this regulation.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, PO Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2705, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

List of Subjects

15 CFR Part 745

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

15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, Parts 745 and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 745—[AMENDED]

■ 1. The authority citation for 15 CFR Part 745 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of November 9, 2000, 65 FR 68063, 3 CFR, 2000 Comp., p. 408.

■ 2. Supplement No. 2 to part 745 is amended by revising the undesignated center heading ''List of States Parties as of April 1, 2003'' to read ''List of States Parties as of March 1, 2004'' and by adding, in alphabetical order, the countries ''Afghanistan'', ''Belize'', ''Cape Verde'', ''Kyrgyzstan'', ''Libya'', ''Sao Tome and Principe'', ''Timor Leste (East Timor)'', ''Tonga'', and ''Tuvalu'.

PART 774—[AMENDED]

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

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

Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

■ 4. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms'' & ''Toxins,'' ECCN 1C351 is amended by revising the List of Items Controlled to read as follows:

1C351 Human and zoonotic pathogens and ''toxins'', as follows (*see* List of Items Controlled)

* * * * *

List of Items Controlled

Unit: Value.

Related Controls: Certain forms of ricin and saxitoxin in 1C351.d.5. and d.6 are CWC Schedule 1 chemicals (*see* § 742.18 of the EAR). The U.S. Government must provide advance notification and annual reports to the OPCW of all exports of Schedule 1 chemicals. See § 745.1 of the EAR for notification procedures. See 22 CFR part 121, Category XIV and § 121.7 for additional CWC Schedule 1 chemicals controlled by the Department of State. All vaccines and ''immunotoxins'' are excluded from the scope of this entry. Certain medical products and diagnostic and food testing kits that contain biological toxins controlled under paragraph (d) of this entry, with the exception of toxins controlled for CW reasons under d.5 and d.6, are excluded from the scope of this entry. Vaccines, ''immunotoxins'', certain medical products, and diagnostic and food testing kits excluded from the scope of this entry are controlled under ECCN 1C991. For the purposes of this entry, only saxitoxin is controlled under paragraph d.6; other members of the paralytic shellfish poison family (*e.g.* neosaxitoxin) are classified as EAR99. Clostridium perfringens strains, other than the epsilon toxin-producing strains of Clostridium perfringens described in c.14, are excluded from the scope of this entry, since they may be used as positive control cultures for food testing and quality control.

Related Definitions: 1. For the purposes of this entry ''immunotoxin'' is defined as an antibody-toxin conjugate intended to destroy specific target cells (*e.g.*, tumor cells) that bear antigens homologous to the antibody. 2. For the purposes of this entry ''subunit'' is defined as a portion of the ''toxin''.

Items:

a. *Viruses, as follows:*

a.1. Chikungunya virus;

a.2. Congo-Crimean haemorrhagic fever virus;

a.3. Dengue fever virus;

a.4. Eastern equine encephalitis virus;

a.5. Ebola virus;

a.6. Hantaan virus;

a.7. Japanese encephalitis virus;

a.8. Junin virus;

a.9. Lassa fever virus

a.10. Lymphocytic choriomeningitis virus;

a.11. Machupo virus;

a.12. Marburg virus;

a.13. Monkey pox virus;

a.14. Rift Valley fever virus;

a.15. Tick-borne encephalitis virus (Russian Spring-Summer encephalitis virus);

a.16. Variola virus;

a.17. Venezuelan equine encephalitis virus;

a.18. Western equine encephalitis virus;

a.19. White pox;

a.20. Yellow fever virus;

a.21. Kyasanur Forest virus;

a.22. Louping ill virus;

a.23. Murray Valley encephalitis virus;

a.24. Omsk haemorrhagic fever virus;

a.25. Oropouche virus;

a.26. Powassan virus;

a.27. Rocio virus;

a.28. St. Louis encephalitis virus;

a.29. Hendra virus (Equine morbillivirus);

a.30. South American haemorrhagic fever (Sabia, Flexal, Guanarito);

a.31. Pulmonary and renal syndrome-haemorrhagic fever viruses (Seoul, Dobrava, Puumala, Sin Nombre); or

a.32. Nipah virus.

b. Rickettsiae, as follows:

b.1. Bartonella quintana (Rochalimea quintana, Rickettsia quintana);

b.2. Coxiella burnetii;

b.3. Rickettsia prowasecki; or

b.4. Rickettsia rickettsii.

c. Bacteria, as follows:

c.1. Bacillus anthracis;

c.2. Brucella abortus;

c.3. Brucella melitensis;

c.4. Brucella suis;

c.5. Burkholderia mallei (Pseudomonas mallei);

c.6. Burkholderia pseudomallei (Pseudomonas pseudomallei);

c.7. Chlamydia psittaci;

c.8. Clostridium botulinum;

c.9. Francisella tularensis;

c.10. Salmonella typhi;

c.11. Shigella dysenteriae;

c.12. Vibrio cholerae;

c.13. Yersinia pestis;

c.14. Clostridium perfringens, epsilon toxin producing types; or

c.15. Enterohaemorrhagic Escherichia coli, serotype O157 and other verotoxin producing serotypes.

d. ''Toxins'', as follows, and ''subunits'' thereof:

d.1. Botulinum toxins;

d.2. Clostridium perfringens toxins;

d.3. Conotoxin;

d.4. Microcystin (Cyanginosin);

d.5. Ricin;

d.6. Saxitoxin;

d.7. Shiga toxin;

d.8. Staphylococcus aureus toxins;

d.9. Tetrodotoxin;

d.10. Verotoxin;

d.11. Aflatoxins;

d.12. Abrin;

d.13. Cholera toxin;

d.14. Diacetoxyscirpenol toxin;

d.15. T–2 toxin;

d.16. HT–2 toxin;

d.17. Modeccin toxin;

d.18. Volkensin toxin; or

d.19. Viscum Album Lectin 1 (Viscumin).

5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms'' & ''Toxins,'' ECCN 1C352 is amended by revising the List of Items Controlled to read as follows:

1C352 Animal pathogens, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: All vaccines are excluded from the scope of this entry. *See* ECCN 1C991.

Related Definitions: N/A.

Items:

a. *Viruses, as follows:*

a.1. African swine fever virus;

a.2. Avian influenza viruses that are:

a.2.a. Defined in EC Directive 92/40/EC (O.J. L.16 23.1.92 p. 19) as having high pathogenicity, as follows:

a.2.a.1. Type A viruses with an IVPI (intravenous pathogenicity index) in 6 week old chickens of greater than 1.2; or

a.2.a.2. Type A viruses H5 or H7 subtype for which nucleotide sequencing has demonstrated multiple basic amino acids at the cleavage site of haemagglutinin;

a.3. Bluetongue virus;

a.4. Foot and mouth disease virus;

a.5. Goat pox virus;

a.6. Porcine herpes virus (Aujeszky's disease);

a.7. Swine fever virus (Hog cholera virus);

a.8. Lyssa virus;

a.9. Newcastle disease virus;

a.10. Peste des petits ruminants virus;

a.11. Porcine enterovirus type 9 (swine vesicular disease virus);

a.12. Rinderpest virus;

a.13. Sheep pox virus;

a.14. Teschen disease virus;

a.15. Vesicular stomatitis virus;

a.16. Lumpy skin disease virus;

a.17. African horse sickness virus.

b. Bacteria, as follows:

b.1. Mycoplasma mycoides;

b.2. Reserved.

6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms'' & ''Toxins,'' ECCN 1C353 is amended by revising the List of Items Controlled to read as follows:

1C353 Genetic elements and genetically modified organisms, as follows (*see* List of Items Controlled).

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: Vaccines that contain genetic elements or genetically modified organisms identified in this entry are controlled by ECCN 1C991.

Related Definitions: N/A.

Items:

a. *Genetic elements, as follows:*

a.1. Genetic elements that contain nucleic acid sequences associated with the pathogenicity of microorganisms controlled by 1C351.a. to .c, 1C352, or 1C354;

a.2. Genetic elements that contain nucleic acid sequences coding for any of the ''toxins'' controlled by 1C351.d or ''subunits of toxins'' thereof.

Technical Note: 1. Genetic elements include, inter alia, chromosomes, genomes, plasmids, transposons, and vectors, whether genetically modified or unmodified.

2. This ECCN does not control nucleic acid sequences associated with the pathogenicity of enterohaemorrhagic Escherichia coli, serotype O157 and other verotoxin producing strains, except those nucleic acid sequences that contain coding for the verotoxin or its sub-units.

b. Genetically modified organisms, as follows:

b.1. Genetically modified organisms that contain nucleic acid sequences associated with the pathogenicity of microorganisms controlled by 1C351.a. to .c, 1C352, or 1C354;

b.2. Genetically modified organisms that contain nucleic acid sequences coding for any of the ''toxins'' controlled by 1C351.d or ''subunits of toxins'' thereof.

Dated: March 5, 2004.

Peter Lichtenbaum,

Assistant Secretary for Export Administration.

[FR Doc. 04–6111 Filed 3–17–04; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 203

[Docket No. 1992N–0297]

RIN 0905–AC81

Prescription Drug Marketing Act of 1987; Prescription Drug Amendments of1992; Policies, Requirements, and Administrative Procedures; Delay of Effective Date; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; delay of effective date; correction.

SUMMARY: On February 23, 2004 (69 FR 8105), FDA published a delay of the effective date of certain requirements in a final rule published in the **Federal Register** of December 3, 1999 (64 FR 67720). FDA is correcting typographical errors in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of the February 23, 2004, document.

FOR FURTHER INFORMATION CONTACT: Aileen H. Ciampa, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of the document published on February 23, 2004 (69 FR 8105), are corrected as follows:

1. In the second paragraph of the **SUMMARY**, in the second from last sentence, the words ''Therefore, it is necessary to delay the effective date of §§ 203.3(u) and 203.50 (21 CFR 203.3(u) and 203.50) until December 1, 2007 * * *'' is corrected to read ''Therefore, it is necessary to delay the effective date of §§ 203.3(u) and 203.50 (21 CFR 203.3(u) and 203.50) until December 1, 2006 * * *''.

2. In the **SUPPLEMENTARY INFORMATION** section in the ninth paragraph, the last sentence is corrected to read as follows: ''The agency's decision to delay the effective date of §§ 203.3(u) and 203.50 was based, in part, on comments received on FDA's Counterfeit Drug Task Force's Interim Report (Docket 03N–0361).''

3. In the **SUPPLEMENTARY INFORMATION** section, in the tenth paragraph, the second from last sentence is corrected to read as follows: ''One comment suggested an interim solution of a ''one forward, one back'' pedigree for those drugs most likely to be counterfeited.''

4. In the **SUPPLEMENTARY INFORMATION** section, in the thirteenth paragraph, the first two sentences are corrected to read as follows: ''Although FDA is further delaying the effective date of §§ 203.3(u) and 203.50, the agency encourages wholesalers to provide pedigree information that documents the prior history of the product, particularly for those drugs most likely to be counterfeited, even when such a pedigree is not required by the act. The suggestion from the comments that there be a one-forward, one-back pedigree for those drugs most likely to be counterfeited until an electronic pedigree is uniformly adopted may have some merit.''

Dated: March 12, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

For the convenience of the reader, the text of the February 23, 2004, document as corrected, is reprinted as follows:

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 203

[Docket No. 1992N–0297]

RIN 0905–AC81

Prescription Drug Marketing Act of 1987; Prescription Drug Amendments of 1992; Policies, Requirements, and Administrative Procedures; Delay of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; delay of effective date.

SUMMARY: The Food and Drug Administration (FDA) is further delaying until December 1, 2006, the effective date of certain requirements of a final rule published in the **Federal Register** of December 3, 1999 (64 FR 67720). In the **Federal Register** of May 3, 2000 (65 FR 25639), the agency delayed until October 1, 2001, the effective date of certain requirements in the final rule relating to wholesale distribution of prescription drugs by distributors that are not authorized distributors of record, and distribution of blood derivatives by entities that meet the definition of a ''health care entity'' in the final rule. The agency further delayed the effective date of these requirements in three subsequent **Federal Register** notices. Most recently, in the **Federal Register** of January 31, 2003 (68 FR 4912), FDA delayed the effective date until April 1, 2004. This action further delays the effective date of these requirements until December 1, 2006. The final rule implements the Prescription Drug Marketing Act of 1987 (PDMA), as modified by the Prescription Drug Amendments of 1992 (PDA), and the Food and Drug Administration Modernization Act of 1997 (the Modernization Act). The agency is taking this action to address concerns about the requirements in the final rule raised by affected parties.

As explained in the **SUPPLEMENTARY INFORMATION**section, FDA is working with stakeholders through its counterfeit drug initiative to facilitate widespread, voluntary adoption of track and trace technologies that

will generate a de facto electronic pedigree, including prior transaction history back to the original manufacturer, as a routine course of business. If this technology is widely adopted, it is expected to help fulfill the pedigree requirements of the PDMA and obviate or resolve many of the concerns that have been raised with respect to the final rule by ensuring that an electronic pedigree travels with a drug product at all times. Therefore, it is necessary to delay the effective date of §§ 203.3(u) and 203.50 (21 CFR 203.3(u) and 203.50) until December 1, 2006 to allow stakeholders time to continue to move toward this goal. In addition, the further delay of the applicability of § 203.3(q) to wholesale distribution of blood derivatives by health care entities is necessary to give the agency additional time to consider whether regulatory changes are appropriate and, if so, to initiate such changes.

DATES: The effective date for §§ 203.3(u) and 203.50, and the applicability of § 203.3(q) to wholesale distribution of blood derivatives by health care entities, added at 64 FR 67720, December 3, 1999, is delayed until December 1, 2006. Submit written or electronic comments by April 23, 2004.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Aileen H. Ciampa, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: PDMA (Public Law 100–293) was enacted on April 22, 1988, and was modified by the PDA (Public Law 102–353, 106 Stat. 941) on August 26, 1992. The PDMA, as modified by the PDA, amended sections 301, 303, 503, and 801 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 331, 333, 353, 381) to, among other things, establish requirements for the wholesale distribution of prescription drugs and for the distribution of blood derived prescription drug products by health care entities.

On December 3, 1999, the agency published final regulations in part 203 (21 CFR part 203) implementing PDMA (64 FR 67720) that were to take effect on December 4, 2000. After publication of the final rule, the agency received communications from industry, industry trade associations, and members of Congress objecting to the provisions in §§ 203.3(u) and 203.50. Respectively, these provisions define the phrase ''ongoing relationship'' as used in the definition of ''authorized distributor of record'' and set forth requirements regarding an ''identifying statement'' (commonly referred to as a ''pedigree'').

On March 29, 2000, the agency met with representatives from the wholesale drug industry and industry associations to discuss their concerns. In addition, FDA received a petition requesting that the relevant provisions of the final rule be stayed until October 1, 2001. The agency also received a petition from the Small Business Administration requesting that FDA reconsider the final rule and suspend its effective date based on the severe economic impact it would have on more than 4,000 small businesses.

In addition to the communications regarding wholesale distribution by unauthorized distributors, the agency received several letters on, and held several meetings to discuss, the implications of the final regulations for blood centers that distribute blood derivative products and provide health care to hospitals and patients.

Based on the concerns expressed by industry, industry associations, and Congress about implementing §§ 203.3(u) and 203.50 by the December 4, 2000, effective date, the agency delayed the effective date for those provisions until October 1, 2001 (65 FR 25639). FDA also delayed the applicability of § 203.3(q) to wholesale distribution of blood derivatives by health care entities until October 1, 2001, and reopened the administrative record to give interested persons until July 3, 2000, to submit written comments. The rest of the regulations took effect on December 4, 2000.

On May 16, 2000, the House Committee on Appropriations (the Committee) stated in its report accompanying the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill, 2001 (H. Rept. 106–619), that it supported the ''recent FDA action to delay the effective date for implementing certain requirements of the Prescription Drug Marketing Act until October 1, 2001, and reopen the administrative record in order to receive additional comments.'' The Committee further stated that it ''believes the agency should thoroughly review the potential impact of the proposed provisions on the secondary wholesale pharmaceutical industry.'' The Committee directed the agency to provide a report to the Committee summarizing the comments and issues raised and agency plans to address the concerns.

On March 1, 2001, FDA again delayed the effective dates of the provisions to allow time for the agency to consider the comments and testimony received at an October 27, 2000, public hearing and to prepare its report to Congress (65 FR 56480). The agency's report, which was submitted to Congress on June 7, 2001, concluded that FDA could address some of the concerns raised by the secondary wholesale industry and the blood industry through regulatory changes. However, to make other changes requested by the secondary wholesale industry, Congress would have to amend section 503(e) of the act.

Since submitting its report to Congress, FDA has delayed the effective date of the provisions two more times, most recently until April 1, 2004. On both occasions, the effective date was delayed in order to give Congress additional time to determine whether legislative action was appropriate and to give the agency time to consider whether regulatory changes were warranted (67 FR 6645; 68 FR 4912).

Today, the agency is further delaying, until December 1, 2006, the effective date of §§ 203.3(u) and 203.50, and the applicability of § 203.3(q) to wholesale distribution of blood derivatives by health care entities. The agency's decision to delay the effective date of §§ 203.3(u) and 203.50 was based, in part, on comments received on FDA's Counterfeit Drug Task Force's Interim Report (Docket 03N–0361).

As part of its Counterfeit Drug Initiative, FDA sought comment on the most effective ways to achieve the goals of PDMA. In particular, given recent or impending advances in technology, the agency requested comment on the feasibility of using an electronic pedigree in lieu of a paper pedigree. Although many comments received by the Task Force supported the use of paper pedigrees for their deterrent value and as a means to verify prior sales through due diligence, the majority of comments confirmed that significant concerns persist regarding the feasibility and limitations of full implementation of the PDMA pedigree requirements. Some comments suggested a risk-based approach to implementing PDMA, focusing on those drugs at high risk for counterfeiting. For example, some comments suggested that drugs at high risk for counterfeiting maintain a full pedigree that documents all sales and transactions back to the manufacturer. One comment suggested an interim solution of a ''one forward, one back'' pedigree for those drugs most likely to be counterfeited. The majority of comments, however, supported the eventual use of an electronic pedigree for all drug products in the supply chain and indicated that an electronic pedigree should be considered as a long-term solution to fulfilling the PDMA requirements codified at § 203.50.

In response to these comments, FDA is continuing to work closely with affected parties to identify and resolve concerns related to the implementation of the pedigree requirements of the PDMA. FDA is encouraged by the enthusiasm and interest that stakeholders in the U.S. drug supply chain have expressed toward the adoption of sophisticated track and trace technologies. Although there are technical, operational, and regulatory issues that have yet to be resolved, these are being considered and addressed by FDA and stakeholders. Currently, it appears that industry will migrate toward and implement electronic track and trace capability by 2007. If this capability is widely adopted, a de facto electronic pedigree will follow the product from the place of manufacture through the U.S. drug supply chain to the final dispenser. If properly implemented, this electronic pedigree could meet the statutory requirement in 21 U.S.C. 353(e)(1)(A) that ''each person who is engaged in the wholesale distribution of a drug*** who is not the manufacturer or authorized distributor of record of such drug*** provide to the person who receives the drug a statement (in such form and containing such information as the Secretary may require) identifying each prior sale, purchase, or trade of such drug (including the date of the transaction and the names and addresses of all parties to the transaction.)'' The permanent electronic pedigree would address the concerns that have been expressed by

wholesalers, particularly secondary wholesalers, regarding access to pedigrees because the required information would travel with the product at all times, regardless of whether a party to the transaction is an authorized distributor of record.

Until the electronic pedigree is in widespread use, FDA believes that the multi-layer strategies and measures discussed in the FDA's Counterfeit Drug Final Report (Final Report) can help reduce the likelihood that counterfeit drugs will be introduced into the U.S. drug distribution system. These measures, combined with implementation of Radio Frequency Identification (RFID) technology, could provide effective long-term protections to help minimize the number of counterfeit drug products in the U.S. distribution system. As discussed in greater detail in the Final Report, such long-term measures include the following: Use of authentication technologies in products and packaging and labeling, in particular, for drugs most likely to be counterfeited; adoption of secure business practices by stakeholders; adoption of the revised model rules for wholesale distributor licensure by States; stronger criminal penalties and enforcement at the State and national levels; and education and outreach to stakeholders, including greater communication through the counterfeit alert network.

Although FDA is further delaying the effective date of §§ 203.3(u) and 203.50, the agency encourages wholesalers to provide pedigree information that documents the prior history of the product, particularly for those drugs most likely to be counterfeited, even when such a pedigree is not required by the act. The suggestion from the comments that there be a one-forward, one-back pedigree for those drugs most likely to be counterfeited until an electronic pedigree is uniformly adopted may have some merit. However, FDA believes legislative changes would be needed before it could adopt such a system.

To summarize, FDA has concluded that an electronic pedigree should accomplish and surpass the goals of PDMA and is potentially a more effective solution to tracing the movement of pharmaceuticals than a paper pedigree. As stated previously, it appears that industry will migrate toward and implement electronic track and trace capability by 2007. Therefore, to allow stakeholders to continue to move toward this goal, FDA has decided to delay the effective date of §§ 203.3(u) and 203.50 until December 1, 2006. Before the effective date, FDA intends to evaluate the progress toward implementation of the electronic pedigree and its capacity to meet the intent of PDMA, and determine whether to further delay the effective date of the regulations or take other appropriate regulatory action.

FDA is also further delaying the applicability of § 203.3(q) to wholesale distribution of blood derivatives by health care entities. This further delay is necessary to give FDA additional time to address concerns about the requirements raised by affected parties and consider whether regulatory changes are appropriate and, if so, initiate such changes.

FDA has examined the impacts of this delay of effective date under Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this action is consistent with the regulatory philosophy and principles identified in the Executive order. This action will ease the burden on industry by delaying the effect of §§ 203.3(u) and 203.50, and the applicability of § 203.3(q) to wholesale distribution of blood derivatives by health care entities while FDA works with industry to resolve concerns about these provisions either with the implementation of technological solutions (§§ 203.3(u) and 203.50) or the consideration of possible regulatory changes (§ 203.3(q)). Thus, this action is not a significant action as defined by the Executive order.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, the agency's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and (d)(3). Seeking public comment is impracticable, unnecessary, and contrary to the public interest. In addition, given the imminence of the current compliance date, seeking prior public comment on this delay is contrary to the public interest in the orderly issuance and implementation of regulations. Notice and comment procedures in this instance would create uncertainty, confusion, and undue financial hardship because, during the time that the agency would be proposing to extend the compliance date for the requirements identified below, those companies affected would have to be preparing to comply with the April 1, 2004, compliance date. In accordance with 21 CFR 10.40(c)(1), FDA is also providing an opportunity for comment on whether this delay should be modified or revoked.

This action is being taken under FDA's authority under 21 CFR 10.35(a).The Commissioner of Food and Drugs finds that this delay of the effective date is in the public interest.

Dated: February 17, 2004

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–6094 Filed 3–17–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–247F]

Schedules of Controlled Substances; Placement of 2,5-Dimethoxy-4-(n)-propylthiophenethylamine and N-Benzylpiperazine Into Schedule I of the Controlled Substances Act

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Final rule.

SUMMARY: This final rulemaking is issued by the Acting Deputy Administrator of the Drug Enforcement Administration (DEA) to place 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C–T–7) and N-benzylpiperazine (BZP) into Schedule I of the Controlled Substances Act (CSA). This action by the DEA Acting Deputy Administrator is based on a scheduling recommendation by the Department of Health and Human Services (DHHS) and a DEA review indicating that 2C–T–7 and BZP meet the criteria for placement in Schedule I of the CSA. This final rule will continue to impose the regulatory controls and criminal sanctions of Schedule I substances on the manufacture, distribution, and possession of 2C–T–7 and BZP.

EFFECTIVE DATE: March 18, 2004.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION: On September 20, 2002, the Deputy Administrator of the DEA published two separate final rules in the **Federal Register** (67 FR 59161 and 67 FR 59163) amending § 1308.11(g) of Title 21 of the Code of Federal Regulations to temporarily place 2C–T–7, BZP and TFMPP (1-(3-trifluromethylphenyl)piperazine into Schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). These final rules, which became effective on the date of publication, were based on findings by the Deputy Administrator that the temporary scheduling of BZP, TFMPP and 2C–T–7 was necessary to avoid an imminent hazard to the public safety. Section 201(h)(2) of the CSA (21 U.S.C. 811(h)(2)) requires that the temporary

scheduling of a substance expires at the end of one year from the effective date of the order. However, if proceedings to schedule a substance pursuant to 21 U.S.C 811(a)(1) have been initiated and are pending, the temporary scheduling of a substance may be extended for up to six months. On September 8, 2003, the Administrator published a notice of proposed rulemaking in the **Federal Register** (68 FR 52872) to place BZP, TFMPP and 2C–T–7 into Schedule I of the CSA on a permanent basis. The temporary scheduling of BZP, TFMPP and 2C–T–7 which would have expired on September 19, 2003, was extended to March 19, 2004 (68 FR 53289). One comment was received regarding the proposed placement of these substances in Schedule I of the CSA.

The DEA has gathered and reviewed the available information regarding the pharmacology, chemistry, trafficking, actual abuse, pattern of abuse and the relative potential for abuse for 2C–T–7, BZP and TFMPP. The Administrator has submitted these data to the Assistant Secretary for Health, Department of Health and Human Services (DHHS). In accordance with 21 U.S.C. 811(b), the Administrator also requested a scientific and medical evaluation and a scheduling recommendation for 2C–T–7, BZP and TFMPP from the Assistant Secretary of DHHS. On March 10, 2004, the Acting Assistant Secretary for Health recommended that 2C–T–7 and BZP be permanently controlled in Schedule I of the CSA. However, under recommendation of the Food and Drug Administration (FDA) and a scientific evaluation of the National Institute on Drug Abuse (NIDA), the DHHS did not recommend control of TFMPP. Accordingly, TFMPP will no longer be controlled under the CSA after March 19, 2004.

BZP is a piperazine derivative. This substance has not been evaluated or approved for medical use in the U.S. The available scientific evidence suggests that the pharmacological effects of BZP are substantially similar to amphetamine.

BZP is self-administered by monkeys maintained on cocaine and fully generalizes to amphetamine's discriminative stimulus in monkeys. The effects of BZP in amphetamine-trained monkeys strongly suggest that BZP will produce amphetamine-like effects in humans. BZP acts as a stimulant in humans and produces euphoria and cardiovascular changes including increases in heart rate and systolic blood pressure. BZP is about 20 times more potent than amphetamine in producing these effects. However, in subjects with a history of amphetamine dependence, BZP was found to be about 10 times more potent than amphetamine. The risks to the public health associated with amphetamine abuse are well known and documented. BZP is likely to share these same public health risks.

The abuse of BZP was first reported in late 1996 in California. Since that time, the DEA, state and local law enforcement agencies have encountered BZP in California, Connecticut, Florida, Illinois, Indiana, Iowa, Louisiana, Minnesota, Missouri, Nevada, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Virginia, Washington, DC, and Wisconsin. Since 2000, there have been 83 cases involving the seizure of nearly 18,000 BZP tablets and over 600,000 grams of BZP powder. Seizures involving the combination of TFMPP and BZP include over 55,000 tablets and over 80 grams of powder.

BZP has increasingly been found in similar venues as the popular club drug MDMA (also known as Ecstasy). BZP, often in combination with TFMPP, is sold as MDMA, promoted as an alternative to MDMA and is targeted to the youth population. BZP (alone or in combination with TFMPP) has been encountered in powder and tablet form and sold on the Internet.

2C–T–7 is the sulfur analogue of 4-bromo-2,5-dimethoxyphenethylamine (2CB) and shares structural similarity with other Schedule I phenethylamine hallucinogens including 2,5-dimethoxy-4-methylamphetamine (DOM) and 1-(4-bromo-2,5-dimethoxyphenyl)-2-aminopropane (DOB). Based on its structural similarity to 2CB, one would expect 2C–T–7's pharmacological profile to be qualitatively similar to 2CB.

2C–T–7 is abused for its action on the central nervous system (CNS), and for its ability to produce euphoria with 2CB-like hallucinations. 2C–T–7 has not been approved for medical use in the United States by the FDA and the safety of this substance for use in humans has never been demonstrated.

Drug discrimination studies in animals indicate that 2C–T–7 is a psychoactive substance capable of producing hallucinogenic-like discriminative stimulus effects (*i.e.,* subjective effects). 2C–T–7's subjective effects were shown to share some commonality with LSD; it partially substituted for LSD up to doses that severely disrupted performance in rats trained to discriminate LSD. In rats trained to discriminate DOM, 2C–T–7 fully substituted for DOM and was slightly less potent than 2CB in eliciting DOM-like effects. The ability of 2C–T–7 to function as a discriminative stimulus has been evaluated in rats trained to discriminative 1.0 mg/kg of 2C–T–7 from saline. After stimulus control was established, 2C–T–7, 2CB (0.6, 1.0, and 2.0 mg/Kg) and LSD (0.1 mg/kg) were substituted for 2C–T–7. Results suggest that both 2CB and LSD share 2C–T–7-like discriminative stimulus effects. 2CB generalized to the 2C–T–7 stimulus cue; 96 percent 2C–T–7-appropriate responding was observed. LSD elicited 95 percent 2C–T–7-appropriate responding.

The subjective effects of 2C–T–7, like those of 2CB and DOM, appear to be mediated through central serotonin receptors. 2C–T–7 selectively binds to the 5–HT receptor system. Users indicate that the hallucinogenic effects of 2C–T–7 are comparable to those of 2CB and mescaline.

The abuse of stimulant/hallucinogenic substances in popular all night dance parties (raves) and in other venues has been a major problem in Europe since the 1990s. In the past several years, this activity has spread to the United States. MDMA and its analogues, are the most popular drugs abused at these raves. Their abuse has been associated with both acute and long-term public health and safety problems. These raves have also become venues for the trafficking and abuse of other controlled substances. 2C–T–7 has been encountered at raves in Wisconsin, California, and Georgia.

The abuse of 2C–T–7 by young adults in the United States began to spread in the year 2000. Since that time, 2C–T–7 has been encountered by law enforcement agencies in Wisconsin, Texas, Tennessee, Washington, Oklahoma, Georgia, and California. 2C–T–7 has been purchased in powder form over the Internet and distributed as such. In the United States, capsules containing 2C–T–7 powder have been encountered.

2C–T–7 can produce sensory distortions and impaired judgment can lead to serious consequences for both the user and the general public. To date, three deaths have been associated with the consumption of 2C–T–7 alone or in combination with MDMA. The first death occurred in Oklahoma during April of 2000; a young healthy male overdosed on 2C–T–7 following intranasal administration. The other two 2C–T–7 related deaths occurred in April 2001 and resulted from the co-abuse of 2C–T–7 with MDMA. One young man died in Tennessee while another man died in the state of Washington.

In 2002, law enforcement data identified an Internet site that sold 2C–T–7. This site was traced to an

individual in Indiana who had been selling large quantities of this substance since January 2000. Sales through this Internet site were thought to be the major source of this drug in the U.S. After further investigation, one clandestine laboratory was identified in Las Vegas, Nevada who was the supplier of 2–C–T–7 for the individual in Indiana.

The DEA received one comment from an organization in response to the proposed placement of 2C–T–7, BZP and TFMPP into Schedule I of the CSA. This organization did not support the proposed placement of these drugs into Schedule I on the following basis: (1) They felt insufficient data exists to support placement into Schedule I as the mere use of these substances was not abuse and (2) Prohibiting the possession of these substances is a substantial infringement of the fundamental right of adults to freedom of thought. Both the DEA and the DHHS have found that sufficient scientific, trafficking and abuse data, as summarized herein, does exist to place 2C–T–7 and BZP in Schedule I of the CSA on a permanent basis. As these substances have no legitimate medical use in the U.S., the trafficking in, and use by individuals for the psychoactive effects they produce, is considered abuse. In addition, the control of these substances in Schedule I of the CSA does not violate any legally protected right.

Based on all the available information gathered and reviewed by the DEA and in consideration of the scientific and medical evaluation and scheduling recommendation by the Assistant Secretary of the DHHS, the Acting Deputy Administrator has determined that sufficient data exist to support the placement of 2C–T–7 and BZP into Schedule I of the CSA pursuant to 21 U.S.C. 811(a). The Acting Deputy Administrator finds:

(1) 2C–T–7 and BZP have a high potential for abuse.

(2) 2C–T–7 and BZP have no currently accepted medical use in treatment in the United States.

(3) 2C–T–7 and BZP lack accepted medical safety for use under medical supervision.

In accordance with 21 U.S.C. 811(h)(5), the Acting Deputy Administrator hereby vacates the orders temporarily placing 2C–T–7, BZP and TFMPP into Schedule I of the CSA published in the **Federal Register** on September 20, 2002.

The Acting Deputy Administrator of the DEA hereby certifies that the placement of 2C–T–7 and BZP into Schedule I of the CSA will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This action involves the control of two substances with no currently accepted medical use in the United States.

This final rule is not a significant regulatory action for the purposes of Executive Order (E.O.) 12866 of September 30, 1993. Drug Scheduling matters are not subject to review by the Office of Management and Budget (OMB) pursuant to provisions of E.O. 12866, section 3(d)(1).

This action has been analyzed in accordance with the principles and criteria in E.O. 13132, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Requirements

With the issuance of this final order, 2C–T–7 and BZP continue to be subject to regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, dispensing, importing and exporting of a Schedule I controlled substance, including the following:

1. *Registration.* Any person who manufactures, distributes, dispenses, imports or exports 2C–T–7 and BZP or who engages in research or conducts instructional activities with respect to 2C–T–7 and BZP or who proposes to engage in such activities must submit an application for Schedule I registration in accordance with part 1301 of Title 21 of the Code of Federal Regulations (CFR).

2. *Security.* 2C–T–7 and BZP are subject to Schedule I security requirements and must be manufactured, distributed and stored in accordance with §§ 1301.71, 1301.72(a), (c), and (d), 1301.73, 1301.74, 1301.75 (a) and (c) and 1301.76 of Title 21 of the Code of Federal Regulations.

3. *Labeling and Packaging.* All labels and labeling for commercial containers of 2C–T–7 and BZP which are distributed on or after April 19, 2004, shall comply with requirements of §§ 1302.03–1302.07 of Title 21 of the Code of Federal Regulations.

4. *Quotas.* Quotas for 2C–T–7 and BZP are established pursuant to Part 1303 of Title 21 of the Code of Federal Regulations.

5. *Inventory.* Every registrant required to keep records and who possesses any quantity of 2C–T–7 and BZP is required to keep an inventory of all stocks of the substances on hand pursuant to §§ 1304.03, 1304.04 and 1304.11 of Title 21 of the Code of Federal Regulations. Every registrant who desires registration in Schedule I for 2C–T–7 and BZP shall conduct an inventory of all stocks of 2C–T–7 and BZP.

6. *Records.* All registrants are required to keep records pursuant to §§ 1304.03, 1304.04 and §§ 1304.21–1304.23 of Title 21 of the Code of Federal Regulations.

7. *Reports.* All registrants required to submit reports in accordance with § 1304.31 through § 1304.33 of Title 21 of the Code of Federal Regulations shall do so regarding 2C–T–7 and BZP.

8. *Order Forms.* All registrants involved in the distribution of 2C–T–7 and BZP must comply with the order form requirements of part 1305 of Title 21 of the Code of Federal Regulations

9. *Importation and Exportation.* All importation and exportation of 2C–T–7 and BZP must be in compliance with part 1312 of Title 21 of the Code of Federal Regulations.

10. *Criminal Liability.* Any activity with 2C–T–7 and BZP not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act occurring on or after March 18, 2004, will continue to be unlawful.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

■ Under the authority vested in the Attorney General by Section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100) and re-delegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Acting Deputy Administrator amends 21 CFR Part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

■ 2. Section 1308.11 is amended by:
■ A. Removing paragraphs (g)(3), (4) and (5) and redesignating paragraphs (g)(6) and (7) as (g)(3) and (4) respectively;
■ B. Redesignating existing paragraphs (d)(6) through (d)(31) as paragraphs (d)(7) through (d)(32) respectively;
■ C. Adding a new paragraph (d)(6),
■ D. Redesignating existing paragraphs (f)(2) through (f)(7) as paragraphs (f)(3) through (f)(8) respectively; and
■ E. Adding a new paragraph (f)(2) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(6) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (other name: 2C–T–7)	7348

* * * * *

(f) * * *

(2) N-Benzylpiperazine (some other names: BZP, 1-benzylpiperazine)	7493

Dated: March 15, 2004.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 04–6110 Filed 3–17–04; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice: 4654]

RIN 1400–AB49

Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended—Elimination of Crew List Visas

AGENCY: Department of State.

ACTION: Interim final rule.

SUMMARY: This rule makes final on an interim basis the Department's proposed regulations regarding the elimination of crew list visas.

EFFECTIVE DATE: This rule takes effect on June 16, 2004.

Comment Date: Comments on the interim final rule must be received by May 17, 2004. The remaining 30 days until implementation will provide the Department time to evaluate and review public comments received and determine if any additional steps, including a possible extension of an additional 90 days, needs to be taken to ameliorate effects on the shipping industry.

ADDRESSES: Comments may be sent by regular mail to CA/VO/L/R, L–603, SA–1, 2401 E Street, NW., U.S. Department of State, Washington, DC 20520–0106; or by e-mail to *ackerrl@state.gov.* You may view this rule online at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ron Acker, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, (202) 663–1205 or e-mail *ackerrl@state.gov.*

SUPPLEMENTARY INFORMATION: On December 13, 2002, the Department published a rule (67 FR 76711) proposing to eliminate crew list visas. The Department is now making final on an interim basis that proposed rule.

DHS has authorized this regulation pursuant to the Memorandum of Understanding Between the Secretaries of State and Homeland Security Concerning Implementation of Section 428 of the Homeland Security Act of 2002. The requirements of 22 CFR 41.42 are being removed in coordination with the removal of similar requirements by DHS in its corresponding regulations.

What Are the Statutory Authorities Pertaining to the Crew List Visa?

Authority for the issuance of a crew list visa is derived from sections 101(a)(15)(D) and 221(f) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(D) and 1201(f), respectively. Section 101(a)(15)(D) exempts aliens serving in good faith as crewmen on board a vessel (other than a fishing vessel having its home port or an operating base in the United States, unless temporarily landing in Guam), or aircraft from being deemed immigrants. Section 221(f), permits an alien to enter the United States on the basis of a crew manifest that has been visaed by a consular officer. However, the latter section does not require a consular officer to visa a crew manifest and it authorizes the officer to deny admission to any individual alien whose name appears on a visaed crew manifest. Further, according to the wording of section 221(f) the use of the visaed crew list appears to have been intended principally as a temporary or emergency measure to be used only until such time as it becomes practicable to issue individual documents to each member of a vessel's or aircraft's crew.

Why Is the Department Eliminating the Crew List Visa?

The Department is eliminating the crew list visa for security reasons. Since the September 11, 2001 attacks, the Department made a review of its regulations to ensure that every effort is being made to screen out undesirable aliens. By eliminating the crew list visa, the Department will ensure that each crewmember entering the United States will be required to complete the nonimmigrant visa application forms, submit a valid passport and undergo an interview and background checks. Additionally, the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107–173) requires that all visas issued after October 26, 2004 have a biometric indicator. This means crew list visas would necessarily be eliminated by that date.

Did the Department Solicit Comments in the Proposed Rule?

The Department did solicit comments, and 82 were received. The text of about half the comments was identical. Most of the other letters expressed the same views, and some had additional comments. A summary of the comments received and the Department's responses follows.

While most of the commentaries requested that the crew list visa be maintained, others asked instead for a long phase-in period of up to a year in order to allow crewmembers time to get individual visas. While the Department agrees that there should be a phase-in period, because the principal purpose of eliminating the crew list visa is to enhance security, the Department does not agree that it should wait an entire year before requiring individual visas of crewmen. Therefore, the Department will make the rule effective ninety days after publication. The Department believes this will be sufficient time for most crewmen who wish to obtain visas to do so. This is especially true in light of the additional procedures the Department will be undertaking to expedite the issuance of individual visas as mentioned later in this discussion.

Several commenters requested that before determining whether to make the proposed rule final, the Department wait at least until the International Labor Organization (ILO) makes a decision on a proposal it has under consideration for a seafarer's ID document that would include biometrics. Most of these commenters felt that the proposed ID could serve as a substitute for a passport and that due to its security features would make crew list visas more secure, even in the absence of consular interviews of all crew members, which is typical when crew list visas are issued. While the Department recognizes that a seafarer's ID containing biometrics could be useful, it is likely to take years for such a document to be developed and adopted widely. Further, one of the principal reasons for requiring individual visas is the need, for security purposes, for a consular officer to personally interview each applicant. Adoption of the new ID card will not address the need for interviews.

Almost all of the commenters expressed concern about the difficulty of crewmen obtaining individual visas. It was stated that cargo shipping is generally routed at the last minute. Thus crewmembers frequently don't know in advance that they will travel to the United States. Further, schedules are

often shifted at the last minute, all of which make it difficult for crewmen to apply for individual visas. The Department acknowledges that there may be some situations initially when rerouting and other circumstances may cause an individual or individuals not to have visas. However, the Department continues to believe that the security of the U.S. demands individual crew visas despite the dislocations that the requirement may cause initially. Nevertheless, the Department hopes that shipping companies and unions will encourage their employees and members to obtain visas where there is a reasonable possibility that a crewman may be required to enter the U. S. at any time. The visa, once obtained, and depending upon bilateral reciprocity for like documents held by U.S. seamen, will generally be valid for up to five years. Therefore, once individual crew visas are obtained and used generally by seamen working for companies that ship to the U.S., there should be reasonable certainty that most of the crew will be able to enter the U.S. on short notice.

Many commenters have expressed concerns that crewmembers will incur additional expenses. This issue was addressed in the proposed rule. In general, in terms of the actual cost of a visa, per crewman, the cost of an individual visa will be no more than it is, per crewman, on a crew list visa, and in most cases over a period of years will average out to be less. For crew list visas, each crewman already pays an individual processing, *i.e.*, machine-readable visa (MRV) fee of $100.00. Although reciprocity fees are waived for individuals on a crew list visa and are not for individual visas, that cost should be more than offset in most cases by the fact that the crewman will be receiving (depending upon reciprocity for each individual's country of nationality) a multiple entry, long term visa instead of the one entry, 6 month crew list visa.

Some shipping companies have expressed concerns that there will be costly delays at port while crewmembers await the necessary processing and clearances to obtain a visa. The Department recognizes that such delays indeed could be costly, but in light of September 11, believes it is in the national interest to ensure that all aliens, including crewmembers, are properly screened before entering the United States. Therefore, the Department is making and will continue to make every effort to ensure that applications made for crew visas will be processed expeditiously. The Department recognizes that crewmembers may not be able to file an application for a visa in their home country. Thus, crewmembers will be able to apply at any U.S. Embassy or Consulate that issues visas. The Department will remind all visa-issuing offices of already existing regulations that they must accept applications from all persons physically present in a consular district, regardless of place of residence. The Department will also emphasize to visa issuing offices the need to process expeditiously applications for individual crew visas. The Department understands that some consular posts may see a significant increase in crew visas and, is prepared, if necessary, to increase staff to handle the additional workload. The Department has already added an additional officer position at the Embassy in Manila, which handles the largest volume of applications from crewmembers.

How Does This Rule Amend the Department's Regulations?

This rule removes the Department's regulations at 22 CFR 41.42 that establish the crew list visa. By doing so, all crewmembers seeking to enter the United States in that capacity will be required to apply for individual crew visas.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as an interim final rule, with a 60-day provision for post-promulgation public comments, based on the ''good cause'' exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). It is dictated by the necessity to ensure that every effort is being made to screen out undesirable aliens; additionally, the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107–173) requires that all visas issued after October 26, 2004 have a biometric indicator, which means crew list visas would necessarily be eliminated by that date.

Regulatory Flexibility Act/Executive Order 13272: Small Business

These changes to the regulations are hereby certified as not expected to have a significant effect on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

The Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Pub. L. 104–4; 109 Stat. 48; 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule does not result in any such expenditure nor will it significantly or uniquely affect small governments.

Executive Order 13132: Federalism

The Department finds that this regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor does the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

Executive Order 12866: Regulatory Review

The Department of State considers this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Therefore, the Department has submitted the rule to the Office of Management and Budget for its review.

Executive Order 12988: Civil Justice Reform

The Department has reviewed the proposed regulations in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

The Paperwork Reduction Act of 1995

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

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

In light of the nature of these regulations and section 654 of the

Treasury and General Government Appropriations Act of 1999, Pub. L. 105–277, 112 Stat. 2681 (1998), the Department has assessed the impact of these proposed regulations on family well being in accordance with section 654(c) of that Act. This rule is intended to promote child and family safety by helping prevent child abduction and trafficking.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Passports, Visas.

■ In view of the foregoing, 22 CFR Part 41 is amended as follows:

PART 41—[AMENDED]

■ 1. The authority citation for Part 41 continues to read:

Authority: 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681–795 through 2681–801.

§ 41.42 [Removed and Reserved]

Remove and reserve § 41.42.

Dated: March 2, 2004.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 04–6121 Filed 3–17–04; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9118]

RIN 1545–BC84

Loss Limitation Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains amendments relating to certain aspects of the temporary regulations addressing the deductibility of losses recognized on dispositions of subsidiary stock by members of a consolidated group and to the consequences of treating subsidiary stock as worthless. In addition, this document contains temporary regulations that clarify when stock of a member of a consolidated group may be treated as worthless. These regulations apply to corporations filing consolidated returns. The text of these 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 18, 2004.

Applicability Date: For dates of applicability *see* §§ 1.337(d)–2T(g), 1.1502–35T(f) and 1.1502–80T(c).

FOR FURTHER INFORMATION CONTACT: Regarding the amendments under section 337(d), Mark Weiss (202–622–7790) of the Office of Associate Chief Counsel (Corporate), and, regarding the amendments under section 1502, Lola L. Johnson (202–622–7550) of the Office of Associate Chief Counsel (Corporate) (neither is a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On March 12, 2002, the IRS and Treasury published TD 8984 (67 FR 11034, 2002–1 C.B. 668), which included temporary regulations under sections 337(d) and 1502 that limit the deductibility of loss recognized by a consolidated group on the disposition of stock of a subsidiary and that require certain basis reductions on the deconsolidation of stock of a subsidiary. Those regulations are intended to prevent a corporation from avoiding the recognition of gain on the disposition of assets through the use of the consolidated return regulations.

Section 1.337(d)–2T disallows loss recognized by a member of a consolidated group with respect to the disposition of stock of a subsidiary to the extent that such loss is attributable to the recognition of built-in gain on the disposition of an asset. For this purpose, built-in gain is gain recognized on the disposition of an asset to the extent attributable, directly or indirectly, in whole or in part, to any excess of value over basis that is reflected, before the disposition of the asset, in the basis of the share, directly or indirectly, in whole or in part, after applying section 1503(e) and other applicable provisions of the Internal Revenue Code and regulations.

On March 14, 2003, the IRS and Treasury published TD 9048 (68 FR 12287, 2003–13 I.R.B. 645), which included temporary regulations generally intended to prevent consolidated groups from obtaining more than one tax benefit from a single economic loss. In particular, § 1.1502–35T(f) of those temporary regulations prescribes rules that are intended to prevent groups from obtaining more than one tax benefit from a single economic loss when a group member claims a worthless stock deduction with respect to stock of a subsidiary. In such cases, the regulation requires an apportionment of the group's consolidated net operating loss (CNOL) to the subsidiary under the principles of § 1.1502–21T(b), and then treats the apportioned losses as expired.

On August 15, 1994, the IRS and Treasury Department published TD 8560 (59 FR 41666, 1994–2 C.B. 200) adding paragraph (c) to § 1.1502–80. Section 1.1502–80(c) provides that, for consolidated return years beginning on or after January 1, 1995, stock of a member is not treated as worthless under section 165 before the stock is treated as disposed of under the principles of § 1.1502–19(c)(1)(iii). Under § 1.1502–19(c)(1)(iii), stock of a subsidiary is treated as disposed of, by reason of worthlessness, at the time substantially all of the subsidiary's assets are treated as disposed of, abandoned, or destroyed for Federal income tax purposes, at the time of certain discharges of indebtedness of the subsidiary, or at the time a member takes into account certain deductions and losses with respect to indebtedness of the subsidiary. Section 1.1502–80(c) was promulgated to more fully implement the single entity treatment of consolidated groups. It also had the effects of preventing certain inappropriate disallowances of loss that occurred when § 1.1502–20 governed the allowance of stock losses and of alleviating concerns regarding protecting the attributes of bankrupt subsidiaries.

Explanation of Provisions

Taxpayers have raised several questions regarding the interpretation and application of §§ 1.337(d)–2T, 1.1502–35T(f), and 1.1502–80(c). The following paragraphs describe these questions and the manner in which they are addressed in these temporary regulations.

A. Section 1.337(d)–2T

Taxpayers have questioned whether, in computing the amount of stock loss that is attributable to the recognition of built-in gain, gain recognized on the disposition of an asset may be reduced by expenses directly attributable to the recognition of that gain. The IRS and Treasury Department believe that, because expenses attributable to the recognition of built-in gain reduce the basis of the subsidiary's stock, the computation of the amount of stock loss that is attributable to the recognition of built-in gain should take such expenses into account. Accordingly, this document amends § 1.337(d)–2T to provide that stock loss is not disallowed to the extent the taxpayer establishes that the loss or basis is not attributable to recognized built-in gain reduced by expenses directly related to the

recognition of that gain, including, in certain cases, Federal income taxes related to the recognition of such gain. In addition, this document makes a non-substantive technical correction to the example set forth in § 1.337(d)–2T(c)(4).

The IRS and Treasury Department continue to consider alternative methods of implementing section 337(d) in the consolidated return context.

B. Section 1.1502–35T(f)

Taxpayers have commented that, in certain cases, § 1.1502–35T(f) may eliminate losses where there is no risk of duplication. In particular, taxpayers are concerned that the rule appears to eliminate a subsidiary's apportioned part of the CNOL even if the subsidiary has a separate return year following the year in which a member of the group claims a worthless stock deduction with respect to the subsidiary's stock. The IRS and Treasury Department believe that the elimination of a subsidiary's apportioned CNOL is generally necessary to prevent duplication only if a member of the group claims a worthless stock deduction with respect to subsidiary stock and the subsidiary has no separate return year following the year in which the worthless stock deduction is claimed. These temporary regulations, therefore, amend § 1.1502–35T(f) to provide that the subsidiary's apportioned part of the CNOL is treated as expired if a member (the claiming member) claims a worthless stock deduction with respect to the subsidiary's stock and, immediately following the taxable year in which the worthless stock deduction is claimed, the subsidiary is a member of a group that includes any corporation (other than a lower-tier subsidiary of the member the stock of which was treated as worthless) that, during that taxable year, was a member of the group that includes the claiming member.

The IRS and the Treasury Department continue to consider methods of preventing groups from obtaining more than a single tax benefit from a single economic loss other than the methods employed in § 1.1502–35T.

C. Section 1.1502–80(c)

Taxpayers have also raised concerns that, in certain circumstances, § 1.1502–80(c) may prevent a group from claiming a worthless stock deduction with respect to subsidiary stock that is worthless within the meaning of section 165 if the subsidiary ceases to be a member of the group before it satisfies the requirements of § 1.1502–19(c)(1)(iii). For example, assume that the stock of a subsidiary is worthless within the meaning of section 165 but the subsidiary has not disposed of, abandoned, or destroyed substantially all of its assets and the requirements of § 1.1502–19(c)(1)(iii) are not otherwise satisfied. At that time, § 1.1502–80(c) would prevent the group from treating the subsidiary's stock as worthless. If the subsidiary then cancels its outstanding shares and issues new shares to its creditors, which are not members of the group, the subsidiary will cease to be a member of the group before it satisfies the requirements of § 1.1502–80(c). Taxpayers are concerned that, unless § 1.1502–80(c) is treated as inapplicable immediately prior to the cancellation of the subsidiary's stock, the group will never be entitled to claim a worthless stock deduction with respect to that stock.

Section 1.1502–80(c) is intended to defer, not disallow, worthless stock deductions with respect to subsidiary stock. Therefore, these temporary regulations amend § 1.1502–80(c) and add § 1.1502–80T(c) to clarify that the deferral of an otherwise allowable loss under section 165 terminates immediately prior to the time that the subsidiary ceases to be a member of the group. Accordingly, in the example above, the group would be entitled to the worthless stock deduction in the taxable year in which the subsidiary ceases to be a member of the group.

Taxpayers have questioned whether § 1.1502–80(c) remains necessary given that § 1.1502–20 no longer governs the allowance of loss on sales of subsidiary stock. The IRS and Treasury are evaluating whether the rule of § 1.1502–80(c) continues to be necessary or appropriate.

Effective Date

The amendments set forth in these temporary regulations are applicable to tax years beginning after March 18, 2004. However, taxpayers may apply these temporary regulations to certain prior periods.

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. These temporary regulations are necessary to provide taxpayers with immediate guidance regarding allowable loss and basis reductions in connection with dispositions and deconsolidations of subsidiary stock. These temporary regulations clarify existing rules and simplify their application in order to ease taxpayer compliance. Accordingly, good cause is found for dispensing with notice and public procedure pursuant to 5 U.S.C. 553(b)(B) and with a delayed effective date pursuant to 5 U.S.C. 553(d)(1) and (3). For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the **Federal Register.** Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of the regulations under section 337(d) is Mark Weiss, Office of Associate Chief Counsel (Corporate). The principal author of the regulations under section 1502 is Lola L. Johnson, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury 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 1.337(d)–2T is amended by revising paragraph (c)(2) and the example in paragraph (c)(4) to read as follows:

§ 1.337(d)–2T Loss limitation window period (temporary).

* * * * *

(c) * * *

(2) *General rule.* Loss is not disallowed under paragraph (a)(1) of this section and basis is not reduced under paragraph (b)(1) of this section to the extent the taxpayer establishes that the loss or basis is not attributable to the recognition of built-in gain, net of directly related expenses, on the disposition of an asset (including stock and securities). Loss or basis may be attributable to the recognition of built-in gain on the disposition of an asset by a prior group. For purposes of this section, gain recognized on the disposition of an asset is built-in gain to the extent attributable, directly or indirectly, in whole or in part, to any excess of value over basis that is reflected, before the disposition of the

asset, in the basis of the share, directly or indirectly, in whole or in part, after applying section 1503(e) and other applicable provisions of the Internal Revenue Code and regulations. Federal income taxes may be directly related to built-in gain recognized on the disposition of an asset only to the extent of the excess (if any) of the group's income tax liability actually imposed under Subtitle A of the Internal Revenue Code for the taxable year of the disposition of the asset over the group's income tax liability for the taxable year redetermined by not taking into account the built-in gain recognized on the disposition of the asset. For this purpose, the group's income tax liability actually imposed and its redetermined income tax liability are determined without taking into account the foreign tax credit under section 27(a) of the Internal Revenue Code. This paragraph (c)(2) applies to dispositions and deconsolidations on or after March 18, 2004. Taxpayers, however, may choose to apply this paragraph (c)(2) to dispositions and deconsolidations on or after March 7, 2002; otherwise, paragraph (c)(2) of § 1.337(d)–2T as contained in 26 CFR part 1 edition revised as of April 1, 2003, shall apply.

* * * * *

(4) * * *

Example. Loss offsetting built-in gain in a prior group. (i) P buys all the stock of T for $50 in Year 1, and T becomes a member of the P group. T has 2 assets. Asset 1 has a basis of $50 and a value of $0, and asset 2 has a basis of $0 and a value of $50. T sells asset 2 during Year 3 for $50 and recognizes a $50 gain. Under the investment adjustment system, P's basis in the T stock increased to $100 as a result of the recognition of gain. In Year 5, all of the stock of P is acquired by the P1 group, and the former members of the P group become members of the P1 group. T then sells asset 1 for $0, and recognizes a $50 loss. Under the investment adjustment system, P's basis in the T stock decreases to $50 as a result of the loss. T's assets decline in value from $50 to $40. P then sells all the stock of T for $40 and recognizes a $10 loss.

(ii) P's basis in the T stock reflects both T's unrecognized gain and unrecognized loss with respect to its assets. The gain T recognizes on the disposition of asset 2 is built-in gain with respect to both the P and P1 groups for purposes of paragraph (c)(2) of this section. In addition, the loss T recognizes on the disposition of asset 1 is built-in loss with respect to the P and P1 groups for purposes of paragraph (c)(2) of this section. T's recognition of the built-in loss while a member of the P1 group offsets the effect on T's stock basis of T's recognition of the built-in gain while a member of the P group. Thus, P's $10 loss on the sale of the T stock is not attributable to the recognition of built-in gain, and the loss is therefore not disallowed under paragraph (c)(2) of this section.

(iii) The result would be the same if, instead of having a $50 built-in loss in asset 1 when it becomes a member of the P group, T has a $50 net operating loss carryover and the carryover is used by the P group.

* * * * *

■ **Par. 3.** Section 1.1502–35T is amended by revising paragraph (f)(1) to read as follows:

§ 1.1502–35T Transfers of subsidiary member stock and deconsolidations of subsidiary members (temporary).

* * * * *

(f) *Worthlessness not followed by separate return years*—(1) *General rule.* Notwithstanding any other provision in the regulations under section 1502, if a member of a group (the claiming group) treats stock of a subsidiary as worthless under section 165 (taking into account the provisions of § 1.1502–80(c)) and, on the day following the last day of the claiming group's taxable year in which the worthless stock deduction is claimed, the subsidiary (or its successor, determined without regard to paragraphs (d)(5)(iii) and (iv) of this section) is a member of a group that includes any corporation that, during that taxable year, was a member of the claiming group (other than a lower-tier subsidiary of the subsidiary) or is a successor (determined without regard to paragraphs (d)(5)(iii) and (iv) of this section) of such a member, then all losses treated as attributable to the subsidiary under the principles of § 1.1502–21T(b)(2)(iv) shall be treated as expired as of the day following the last day of the claiming group's taxable year in which the worthless stock deduction is claimed. In addition, notwithstanding any other provision in the regulations under section 1502, if a member recognizes a loss with respect to subsidiary stock and on the following day the subsidiary is not a member of the group and does not have a separate return year, then all losses treated as attributable to the subsidiary under the principles of § 1.1502–21T(b)(2)(iv) shall be treated as expired as of the day following the last day of the group's taxable year in which the stock loss is claimed. For purposes of this paragraph (f), the determination of the losses attributable to the subsidiary shall be made after computing the taxable income of the group for the taxable year in which the group treats the stock of the subsidiary as worthless or the subsidiary liquidates and after computing the taxable income for any taxable year to which such losses may be carried back. The loss treated as expired under this paragraph (f) shall not be treated as a noncapital, nondeductible expense under § 1.1502–32(b)(2)(iii). This paragraph (f) applies to worthlessness determinations and liquidations that occur after March 18, 2004 and before March 12, 2006. However, the group may apply this paragraph (f) to worthlessness determinations and liquidations that occur on or after March 7, 2002 and before March 18, 2004; otherwise, paragraph (f) of § 1.1502–35T as contained in 26 CFR part 1 edition revised as of April 1, 2003, shall apply to such determinations of worthlessness and liquidations.

* * * * *

■ **Par. 4.** Section 1.1502–80 is amended by adding a sentence to the end of paragraph (c) to read as follows:

1.1502–80 Applicability of other provisions of law.

* * * * *

(c) * * * For further guidance, see § 1.1502–80T(c).

■ **Par. 5.** Section 1.1502–80T is added to read as follows:

§ 1.1502–80T Applicability of other provisions of law (temporary).

(a) and (b) [Reserved]. For further guidance, see § 1.1502–80(a) and (b).

(c) *Deferral of section 165.* Stock of a member is not treated as worthless under section 165 before the stock is treated as disposed of under the principles of § 1.1502–19(c)(1)(iii). If stock of a member would otherwise be treated as worthless under the principles of section 165, then, notwithstanding the previous sentence, such stock may be treated as worthless under section 165 immediately prior to the time such member ceases to be a member of the group. See §§ 1.1502–11(c) and 1.1502–35T for additional rules relating to stock loss. This paragraph (c) applies to taxable years beginning after March 18, 2004 and before March 19, 2007. Taxpayers, however, may apply this paragraph (c) to taxable years beginning on or after January 1, 1995 and before March 18, 2004; otherwise, paragraph (c) of § 1.1502–80 as contained in 26 CFR part 1 edition revised as of April 1, 2003, shall apply to taxable years beginning on or after January 1, 1995, and on or before March 18, 2004.

(d) through (f) [Reserved]. For further guidance, see § 1.1502–80(d) through (f).

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: March 9, 2004.

Gregory F. Jenner,

Acting Assistant Secretary of the Treasury.

[FR Doc. 04–6140 Filed 3–17–04; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[AZ 114–CORR; FRL–7632–1]

Approval and Promulgation of State Implementation Plans; Designation of Areas for Air Quality Planning Purposes; State of Arizona; Tucson Area; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: In this action, EPA is amending a section in part 52, title 40, of the Code of Federal Regulations (CFR) that identifies the Agency's approvals of revisions to the Arizona State Implementation Plan, and is amending a section of part 81, title 40, of the Code of Federal Regulations that identifies area designations within Arizona. The purpose of this action is to correct these sections to conform to a previous final action taken by EPA related to attainment of the Carbon Monoxide National Ambient Air Quality Standard in the Tucson Air Planning Area.

EFFECTIVE DATE: This action is effective on March 18, 2004.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the Air Planning Office of the Air Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901.

FOR FURTHER INFORMATION CONTACT: Eleanor Kaplan, Air Planning Office (Air-2), U.S. Environmental Protection Agency, Region IX, (415) 947–4147 or e-mail to *kaplan.eleanor@epa.gov.*

SUPPLEMENTARY INFORMATION: On June 8, 2000, at 65 FR 36353, EPA published a final rulemaking action approving the request by Arizona for the redesignation of the Tucson Air Planning Area (TAPA) to attainment for the carbon monoxide (CO) National Ambient Air Quality Standard (NAAQS) and for approval of a maintenance plan. The effective date for that action was July 10, 2000. On August 21, 2000, at 65 FR 50651, EPA published a correction to the June 8, 2000 final rule adding amendments relating to various Arizona statutes to 40 CFR part 52, § 52.120, which identifies the Arizona State Implementation Plan (SIP), and correcting the description of the boundaries for TAPA in 40 CFR part 81, § 81.303, which identifies the area designations for air quality planning purposes within Arizona.

However, in correcting the description of the boundaries of TAPA in the August 21, 2000 correction notice, EPA inadvertently changed the effective date in the Arizona CO table in 40 CFR part 81, § 81.303, on which TAPA's designation became attainment for the CO NAAQS from the correct date, July 10, 2000, to an incorrect date, September 20, 2000. Publication of the 2003 Edition of the volume of 40 CFR containing parts 81 to 85 (*i.e.*, with revisions as of July 1, 2003) added another error by moving the date (erroneously listed as September 20, 2000) for TAPA in the Arizona CO table to the column that describes the designated area. Also, in the August 21, 2000 correction notice, EPA inadvertently deleted the designation type (''Attainment'') from the appropriate column in 40 CFR part 81, § 81.303. Therefore, EPA is taking action today to amend the Arizona CO table in 40 CFR 81.303 to identify the correct effective date for the designation of attainment for TAPA with respect to the CO NAAQS, *i.e.*, July 10, 2000, in the appropriate column, and to identify the designation type (''Attainment'') in the appropriate column, consistent with EPA's final rule published on June 8, 2000 (65 FR 36353). EPA is also taking this opportunity to revise the description of the boundaries for the designated area (''Tucson Area'') in recognition of the change in status of Saguaro National Monument to Saguaro National Park. Saguaro National Park was so designated in 1994.

In addition, in the June 8, 2000 final rule, EPA inadvertently failed to list the *1996 Carbon Monoxide Limited Maintenance Plan for the Tucson Air Planning Area* (as updated August, 1997), submitted by the Arizona Department of Environmental Quality (ADEQ) to EPA on October 6, 1997, as an approved revision to the Arizona SIP in 40 CFR part 52, § 52.120. In the June 8, 2000 final rule, EPA codified its final approval of this plan in 40 CFR part 52, § 52.123, but did not list its approval of this plan in 40 CFR part 52, § 52.120, which is the section of subpart D (Arizona) (of part 52) that identifies the original Arizona SIP and all revisions to the Arizona SIP that have been approved by EPA. Therefore, EPA is taking action today to amend 40 CFR part 52, § 52.120, [specifically, paragraph (c)(91)] to clarify EPA's approval of the *1996 Carbon Monoxide Limited Maintenance Plan for the Tucson Air Planning Area* (as updated August, 1997), submitted by ADEQ on October 6, 1997, as a revision to the Arizona SIP.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA is merely correcting the listing of approved plan revisions in 40 CFR part 52, § 52.120, and correcting the table listing the area designations in 40 CFR part 81, § 81.303, to reflect a previous EPA rulemaking that had been subject to notice and comment procedures. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since June 8, 2000, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C 553(d)(3).

Summary of Final Action

In this action, EPA is amending 40 CFR part 52, subpart D, to list EPA approval of the Tucson CO maintenance plan as a revision to the Arizona SIP and is amending 40 CFR part 81, subpart C, to correct errors in the Arizona CO table for the Tucson Air Planning Area. Specifically, this action amends 40 CFR part 52, § 52.120, relating to the Identification of Plan, and 40 CFR part 81, § 81.303, describing the boundary, date of attainment and attainment status of the Tucson Air Planning Area. This action aligns the applicable sections of 40 CFR parts 52 and 81 with our final rule published in the **Federal Register** on June 8, 2000 that redesignated the Tucson Air Planning Area to attainment for the CO NAAQS and that approved the maintenance plan for that area as a revision to the Arizona SIP.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA)(Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA.

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). 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.

This technical correction action does not involve technical standards; 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.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the June 8, 2000 **Federal Register** action.

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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of March 18, 2004. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 17, 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

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks.

Dated: February 19, 2004.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ Parts 52 and 81 of Chapter I, Title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

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

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

Subpart D—Arizona

■ 2. Section 52.120 is amended by revising paragraph (c)(91) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(91) The following amendments to the plan were submitted on October 6, 1997 by the Governor's designee.

(i) Incorporation by reference.

(A) 1996 Carbon Monoxide Limited Maintenance Plan for the Tucson Air Planning Area (as updated August, 1997).

(1) Base year (1994) emissions inventory and contingency plan, including commitments to follow maintenance plan contingency procedures by the Pima Association of Governments and by the member jurisdictions: the town of Oro Valley, Arizona (Resolution No. (R) 96–38, adopted June 5, 1996), the City of South Tucson (Resolution No. 96–16, adopted on June 10, 1996), Pima County (Resolution and Order No. 1996–120, adopted June 18, 1996), the City of Tucson (Resolution No. 17319, adopted June 24, 1996), and the town of Marana, Arizona (Resolution No. 96–55, adopted June 18, 1996).

(B) Arizona Revised Statutes. Senate Bill 1002, Sections 26, 27 and 28: ARS 41–2083 (amended), 41–2122 (amended), 41–2125 (amended), adopted on July 18, 1996.

* * * * *

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

■ 2. In § 81.303, the Arizona Carbon Monoxide table is amended by revising the entry for the Tucson Area to read as follows:

§ 81.303 Arizona.

* * * * *

ARIZONA.—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Tucson Area: Pima County (part) Township and Ranges as follows: T11–12S, R12–14E; T13–15S; R11–16E; and T16S, R12–16E Gila and Salt River Baseline and Meridian excluding portions of the Saguaro National Park and the Coronado National Forest.	July 10, 2000	Attainment.		
* * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 04–4817 Filed 3–17–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[FRL–7637–8]

RIN 2050 AC62

Spill Prevention, Control, and Countermeasure (SPCC) Stakeholder Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: On July 17, 2002 (67 FR 47042), EPA published final amendments to the SPCC rule. This rule amended an existing rule that had been in effect since 1974. This final rule was effective on August 16, 2002 and included dates by which a facility would have to amend and implement its SPCC plan. The Agency subsequently extended the compliance dates. The compliance deadline for revision and professional engineer (PE) certification of SPCC plans is August 17, 2004.

In anticipation of this August 17, 2004 deadline, EPA will hold a meeting with the regulatory community and interested stakeholders to explain Agency efforts to clarify the regulations and facilitate compliance.

DATES: EPA will hold a public meeting on March 31, 2004 from 9:30 a.m. to 3 p.m.

ADDRESSES: The meeting will be held in Washington, DC. The exact location of the meeting will be announced on the Oil Spill Program web site (*http://www.epa.gov/oilspill/*) or you may contact the person listed in **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Members of the public desiring additional information about this meeting should contact: Leigh DeHaven, U.S. EPA (5203G), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, via the Internet at: *dehaven.leigh@epa.gov,* by telephone at (703) 603–9065 or Fax at (703) 603–9116.

SUPPLEMENTARY INFORMATION:

Agenda: Introduction/SPCC Program Strategy (9:30–10:15 a.m.), SPCC Litigation Settlement Issues (10:15–11 a.m.), Additional SPCC Policy Issues (11 a.m.–Noon), Lunch Break (Noon–1:15 p.m.), Additional SPCC Policy Issues (1:15–2:45 p.m.), Meeting Wrapup/Next Steps (2:45–3 p.m.).

If you are planning to attend the March 31, 2004 meeting in Washington, DC, we request you contact Leigh DeHaven (*see* **FOR FURTHER INFORMATION CONTACT**) so that we may have an idea of the number of the members of the public who will attend. In addition, if you need special accommodations due to a disability, please contact Leigh DeHaven no later than March 26, 2004.

Additional information on the SPCC Rule is available on the Internet at: *http://www.epa.gov/oilspill/spcc.htm.*

Dated: March 15, 2004.

Marianne Lamont Horinko,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 04–6207 Filed 3–17–04; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF TRANSPORTATON

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1999–6189]

Organization and Delegation of Powers and Duties Delegations to the Maritime Administrator

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) is delegating to the Maritime Administrator his authorities under Title XXXV, the Maritime Security Act of 2003, of the National Defense Authorization Act for Fiscal Year 2004, Public Law 108–136, specifically, section 3517—Maintenance and Repair Reimbursement Pilot Program, subtitle C—Maritime Security Fleet, and subtitle D—National Defense Tank Vessel Construction Assistance.

EFFECTIVE DATE: March 18, 2004.

FOR FURTHER INFORMATION CONTACT: Richard Weaver, Director, Office of Management and Information Services, Maritime Administration, MAR–310, Room 7301, 400 Seventh Street, SW., Washington, DC 20590, Phone: (202) 366–2811.

SUPPLEMENTARY INFORMATION: The Secretary of Transportation is delegating to the Maritime Administrator his authority under Public Law 108–136, Title XXXV, the Maritime Security Act of 2003, of the National Defense Authorization Act for Fiscal Year 2004, to:

Under section 3517, carry out a pilot program under which the Secretary may enter into an agreement with a Maritime Security Fleet contractor regarding maintenance and repair of a vessel that is subject to an operating agreement.

Under Subtitle C, which inserted a new subtitle, Subtitle V—Merchant Marine, in Title 46, United States Code, establish a Maritime Security Fleet and to take other actions in furtherance of that authority. Some examples of the actions enumerated are: to require related operating agreements; to accept applications for enrollment of vessels in the Fleet; to approve, in conjunction with the Secretary of Defense, applications for enrollment of vessels in the Fleet within 90 days of receipt of an application, or provide in writing the reason for denial of that application; and to promulgate regulations for the program.

Under Subtitle D, establish a program for the provision of financial assistance for the construction in the United States of a fleet of up to 5 privately owned product tank vessels—(1) to be operated in commercial service in foreign commerce; and (2) to be available for national defense purposes in time of war or national emergency pursuant to an Emergency Preparedness Agreement approved by the Secretary of Defense.

This amendment adds 49 CFR 1.66(ee) through 1.66(gg) to reflect the Secretary of Transportation's delegation of these authorities. Since this amendment relates to departmental organization, procedure and practice, notice and comment are unnecessary under 5 U.S.C. 553(b). Further, since the amendment expedites the Maritime Administration's ability to meet the statutory intent of the applicable laws and regulations covered by this delegation, the Secretary finds good cause under 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

■ In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended, effective upon publication, to read as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. 101–552, 104 Stat. 2736; Pub. L. 106–159, 113 Stat. 1748; Pub. L. 107–71, 115 Stat. 597.

■ 2. Section 1.66 is amended by adding paragraphs (ee) through (gg) to read as follows:

§ 1.66 Delegations to Maritime Administrator.

* * * * *

(ee) Carry out the functions and exercise the authorities vested in the Secretary by section 3517 of Title XXXV of Public Law 108–136 which relates to the Maintenance and Repair Reimbursement Pilot Program.

(ff) Carry out the functions and exercise the authorities vested in the Secretary by Subtitle V of title 46 United States Code, which establishes the Maritime Security Fleet.

(gg) Carry out the functions and exercise the authorities vested in the Secretary by Subtitle D of Title XXXV of Public Law 108–136, which relates to the National Defense Tank Vessel Construction Assistance Program.

Issued at Washington, DC, this 10th day of March, 2004.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 04–6095 Filed 3–17–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1115 and 1130

[STB Ex Parte No. 650]

Revision of Appellate Procedures and Informal Complaints Regulations

AGENCY: Surface Transportation Board, Transportation.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board is amending the appellate procedures and informal complaints regulations to change incorrect citations.

EFFECTIVE DATE: These rules are effective on March 12, 2004.

FOR FURTHER INFORMATION CONTACT: John Sado, (202) 565–1661. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: In *Revision of Delegation of Authority Regulations,* STB Ex Parte No. 588 (STB served Sept. 25, 2002), the Board revised the delegation of authority regulations at 49 CFR Part 1011. As relevant here, the Board renumbered § 1011.7, Delegations of authority by the Chairman, as 49 CFR 1011.6. This renumbering resulted in an incorrect reference in the Appellate Procedures rules at 49 CFR 1115.1(c): ''Appeals from the decisions of employees acting under authority delegated to them by the Chairman of the Board pursuant to § 1011.7 will be acted upon by the entire Board.'' The reference to § 1011.7 will be changed to § 1011.6, which is now the section for delegations of authority by the Chairman.[1]

The Board's informal complaints regulations at 49 CFR 1130.1, state that an informal complaint shall ''contain the essential components of a formal complaint as specified at 49 CFR 1131.1. * * *'' The Board, however, removed Part 1131, dealing with, among other things, formal rate complaints, in *Removal of Miscellaneous Obsolete Regulations,* 2 S.T.B. 645 (1997). The Board noted in removing Part 1131 that it was unnecessary to keep these rules because there already existed, at 49 CFR part 1111, regulations applicable to rate and non-rate complaint cases. 2 S.T.B. at 647. Section 1111.1(a) contains the substance of the rules found at former 49 CFR 1131.1, except that § 1111.1(a) does not contain a reference to requests for oral hearing. Accordingly, the Board will correct the citation in 49 CFR 1130.1(a) to read ''49 CFR 1111.1(a)''.

Because these rule changes relate solely to the rules of agency practice and procedure, they will be issued as final rules without requesting public comment. *See* 5 U.S.C. 553(b)(A). Moreover, good cause is found for making these rules effective on less than 30 days' notice under 5 U.S.C. 553(d) in order to change the incorrect references as soon as possible.

The Board certifies that the rules will not have a significant impact on a substantial number of small entities. This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1115

Administrative practice and procedure.

49 CFR Part 1130

Administrative practice and procedure.

Decided: March 12, 2004.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary

■ For the reasons set forth in the preamble, Parts 1115 and 1130, of title 49, chapter X, of the Code of Federal Regulations are amended as follows:

[1] Section 1011.7 is now the section for ''[d]elegations of authority by the Board to specific offices of the Board.''

PART 1115—APPELLATE PROCEDURES

■ 1. The authority citation for Part 1115 continues to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 721.

■ 2. In § 1115.1(c), remove the citation ''§ 1011.7'' and in its place add ''§ 1011.6''.

PART 1130—INFORMAL COMPLAINTS

■ 3. The authority citation for Part 1130 continues to read as follows:

Authority: 49 U.S.C. 721, 13301(f), and 14709.

■ 4. In § 1130.1(a), remove the citation ''49 CFR 1131.1'' and in its place add ''49 CFR 1111.1(a)''.

[FR Doc. 04–6086 Filed 3–17–04; 8:45 am]
BILLING CODE 4915–01–P

Proposed Rules

Federal Register
Vol. 69, No. 53
Thursday, March 18, 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. 2003–CE–51–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company 65, 90, 99, 100, 200, and 1900 Series Airplanes, and Models 70 and 300 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 87–22–01 R1, which applies to certain Raytheon Aircraft Company (Raytheon) 65, 90, 99, 100, 200, and 1900 series airplanes, and Models 70 and 300 airplanes. AD 87–22–01 R1 currently requires you to repetitively inspect the nose landing gear (NLG) fork for cracks. If cracks are found that exceed certain limits, AD 87–22–01 R1 requires you to replace the NLG fork with a serviceable part or an improved NLG fork (Kit No. 101–8030–1 S or Kit No. 114–8015–1 S, as applicable). Installing an improved NLG fork kit is terminating action for the repetitive inspection requirements. This proposed AD is the result of FAA's current policy to disallow airplane operation when known cracks exist in primary structure. This proposed AD would retain the inspection requirements of AD 87–22–01 R1 and would require you to incorporate an improved NLG fork kit anytime a crack is found. We are issuing this proposed AD to detect and correct cracks in the NLG fork, which could result in reduced structural integrity and inability of the NLG fork to carry design limit and ultimate loads. The reduced residual strength may cause separation failure of the NLG fork, which could result in loss of control of the airplane during take off, landing, and taxi operations.

DATES: We must receive any comments on this proposed AD by May 18, 2004.

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

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–51–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9-ACE–7-Docket@faa.gov*. Comments sent electronically must contain ''Docket No. 2003–CE–51–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–51–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2003–CE–51–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Discussion

Has FAA taken any action to this point? Reports of cracks in the nose landing gear (NLG) fork on several Raytheon airplanes caused us to issue AD 87–22–01, Amendment 39–5748 and AD 87–22–01 R1, Amendment 39–6312 against certain Raytheon 65, 90, 99, 100, 200, and 1900 series airplanes, and Models 70 and 300 airplanes.

AD 87–22–01 required you to repetitively inspect the nose landing gear (NLG) fork for cracks. If cracks were found during any inspection that exceeded certain limits, you were required to replace the NLG fork with a serviceable part.

AD 87–22–01 R1 retained the repetitive inspection and replacement requirements from AD 87–22–01. AD 87–22–01 R1 also introduced incorporating an improved NLG fork (Kit No. 101–8030–1 S or Kit No. 114–8015–1 S, as applicable) as a terminating action for the repetitive inspection requirements.

What has happened since AD 87–22–01 R1 to initiate this proposed action? As currently written, AD 87–22–01 R1 allows continued flight if cracks are found in the NLG fork that do not exceed certain limits. AD 87–22–01 R1 contradicts the FAA's current policy to disallow airplane operation when known cracks exist in primary structure, unless the ability to sustain limit and ultimate load with these cracks is proven. The NLG fork is considered primary structure, and the FAA has not received any analysis to prove that limit and ultimate loads can be sustained with cracks in this area. For this reason, the FAA has determined that the crack limits contained in AD 87–22–01 R1 should be eliminated and that AD action should be taken to require immediate incorporation of Kit No. 101–8030–1 S or Kit No. 114–8015–1 S, as applicable, anytime a crack is found.

This policy did not exist when we issued AD 87–22–01 and AD 87–22–01 R1.

What is the potential impact if FAA took no action? This condition, if not detected and corrected, could cause

failure of the NLG fork to carry design limit and ultimate loads. Failure of the NLG fork could result in loss of control of the airplane during take off, landing, and taxi operations.

Is there service information that applies to this subject? Raytheon has issued Mandatory Service Bulletin SB 32–2102, Revision 7, Revised: July, 2003, to remove flight with allowable crack limits.

What are the provisions of this service information? The service bulletin includes procedures for:

—inspecting the nose landing gear (NLG) fork assembly for cracks; and

—replacing the NLG fork assembly anytime cracks are found.

FAA's Determination and Requirements of this Proposed AD

What has FAA decided? We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing AD action.

What would this proposed AD require? This proposed AD would supersede AD 87–22–01 R1 with a new AD that would incorporate the actions in the previously-referenced service bulletin.

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

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects approximately 5,296 airplanes in the U.S. registry.

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

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $65 per hour = $130	Not applicable	$130	$130 × 5,296 = $688,480.

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need this repair/replacement:

Labor cost	Parts cost	Total cost per kit
4 workhours × $65 per hour = $260	Kit No. 101–8030–1 S = $4,152 Kit No. 114–8015–1 S = $4,210	Kit No. 101–8030–1 S: $260 + $4,152 = $4,412. Kit No. 114–8015–1 S: $60 + $4,210 = $4,470.

Regulatory Findings

Would this proposed AD impact various entities? We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD 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.

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

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

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

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

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2003–CE–51–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 87–22–01 R1, Amendment 39–6312 and by adding a new AD to read as follows:

Raytheon Aircraft Company: Docket No. 2003–CE–51–AD

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by May 18, 2004.

What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 87–22–01 R1, Amendment 39–6312.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
(1) A65 and A65–8200	LC–240 through LC–335.
(2) 70	LB–1 through LB–35.
(3) 65–A80, 65–A80–8800, and 65–B80	LD–151 through LD–511.
(4) 65–88	LP–1 through LP–26, LP–28, and LP–30 through LP–47.
(5) 65–90, 65–A90, B90, C90, and C90A	LJ–1 through LJ–1190.

Model	Serial Nos.
(6) 65–A90–1 (U–21A, JU–21A, U–21G, RU–21A, RU–21D, and RU–21H).	LM–1 through LM–141.
(7) 65–A90–2 (RU–21B)	LS–1 through LS–3.
(8) 65–A90–3 (RU–21C)	LT–1 and LT–2.
(9) 65–A90–4 (RU–21E and RU–21H)	LU–1 through LU–15.
(10) E90	LW–1 through LW–347.
(11) F90	LA–2 through LA–236.
(12) H90 (T–44A)	LL–1 through LL–61.
(13) 99, 99A, A99, A99A, B99, and C99	U–1 through U–239.
(14) 100 and A100	B–2 through B–93, and B–100 through B–247.
(15) A100 (U–21F)	B–95 through B–99.
(16) A100–1 (U–21J)	BB–3 through BB–5.
(17) B100	BE–1 through BE–137.
(18) 200 and B200	BB–2, and BB–6 through BB–1314.
(19) 200C and B200C	BL–1 through BL–72, and BL–124 through BL–131.
(20) 200CT and B200CT	BN–1 through BN–4.
(21) 200T and B200T	BT–1 through BT–33.
(22) A200 (C–12A and C–12C)	BC–1 through BC–75 and BD–1 through BD–30.
(23) A200C (UC–12B)	BJ–1 through BJ–66.
(24) A200CT (C–12D, FWC–12D, and C–12F)	BP–1, BP–7 through BP–11, BP–19, and BP–24 through BP–63.
(25) A200CT (RC–12D and RC–12H)	GR–1 through GR–19.
(26) A200CT (RC–12G)	FC–1 through FC–3.
(27) A200CT (RC–12K)	FE–1 through FE–9.
(28) B200C (C–12F)	BL–73 through BL–112, BL–118 through BL–123, and BP–64 through BP–71.
(29) B200C (UC–12F)	BU–1 through BU–10.
(30) B200C (UC–12M)	BV–1 through BV–10.
(31) 300	FA–1 through FA–168, and FF–1 through FF–19.
(32) 1900	UA–1 through UA–3.
(33) 1900C	UB–1 through UB–74, and UC–1 through UC–78.
(34) 1900C (C–12J)	UD–1 through UD–6.

What Is the Unsafe Condition Presented in This AD?

(d) The actions specified in this AD are intended to detect and correct cracks in the nose landing gear (NLG) fork, which could result in reduced structural integrity and failure of the NLG fork to carry design ultimate load. This failure could result in loss of control of the airplane during take off, landing, and taxi operations.

What Must I do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Inspect, using fluorescent liquid penetrant or magnetic particle method, the nose landing gear (NLG) fork assembly for any signs of cracks.	*For airplanes affected by AD 87–22–01 R1:* Initially inspect within 200 hours time-in-service (TIS) after the last inspection required by AD 87–22–01 R1. *For airplanes not affected by AD 87–22–01 R1:* Initially inspect within the next 200 hours TIS after the effective date of this AD, unless already done.	Follow the instructions in Part II of Raytheon Aircraft Company Mandatory Service Bulletin SB 32–2102, Revision 7, Revised: July, 2003.
(2) If cracks are found during the inspection required in paragraph (e)(1) of this AD, incorporate Kit No. 101–8030–1 S or Kit No. 114–8015–1 S (as applicable).	Before further flight after the effective date of this AD.	Follow the instructions in Part III of Raytheon Aircraft Company Mandatory Service Bulletin SB 32–2102, Revision 7, Revised: July, 2003.
(3) If no cracks are found during the inspection required in paragraph (e)(1) of this AD, repetitively inspect until Kit No. 101–8030–1 S or Kit No. 114–8015–1 S (as applicable) is incorporated. When Kit No. 101–8030–1 S or Kit No. 114–8015–1 S is incorporated, no further action is required.	Repetitively inspect at intervals not to exceed 200 hours TIS after the initial inspection. Incorporate Kit No. 101–8030–1 S or Kit No. 114–8015–1 S (as applicable) prior to further flight after any inspection in which cracks are found.	Follow the instructions in Part III of Raytheon Aircraft Company Mandatory Service Bulletin SB 32–2102, Revision 7, Revised: July, 2003.
(4) Incorporating Kit No. 101–8030–1 S or Kit No. 114–8015–1 S (as applicable) is the terminating action for the repetitive inspection requirements specified in paragraph (e)(3) of this AD.	Kit No. 101–8030–1 S or Kit No. 114–8015–1 S (as applicable) can be incorporated at any time. When incorporated, no further action is required.	Follow Raytheon Aircraft Company Mandatory Service Bulletin SB 32–2102, Revision 7, Revised: July, 2003.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Steven E. Potter, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road,

Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

May I Get Copies of the Documents Referenced in This AD?

(g) You may get copies of the documents referenced in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on March 12, 2004.

Scott L. Sedgwick,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–6113 Filed 3–17–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. 2004N–0115]

Prescription Drug Importation; Public Meeting and Establishment of Docket

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting and establishment of docket.

The Food and Drug Administration (FDA), on behalf of the U.S. Department of Health and Human Services' (HHS) Task Force on Drug Importation, is announcing that it is establishing a docket to receive information and comments on certain issues related to the importation of prescription drugs. FDA is also announcing a public meeting to enable interested individuals, organizations, and other stakeholders to present information to the Task Force for consideration in the study on importation mandated by the Medicare Prescription Drug, Improvement and Modernization Act of 2003. The Task Force is particularly interested in information related to whether and under what circumstances drug importation could be conducted safely, and what its likely consequences would be for the health, medical costs, and development of new medicines for American patients.

Date and Time: The public meeting will be held on April 14, 2004, from 9 a.m. to 5 p.m.

Location: The public meeting will be held at the Natcher Auditorium, Building 45, National Institutes of Health (NIH), 9000 Rockville Pike, Bethesda, MD 20892. Parking will be limited and there may be delays entering the NIH campus due to increased security. We recommend arriving by Metro if possible. NIH is accessible from the Metro's red line at the Medical Center/NIH stop.

Contact Person: Karen Strambler, Office of Policy, Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360, e-mail: *Karen.Strambler@fda.gov*.

Registration and Requests for Oral Presentation: No registration is required to attend the public meeting. Seating will be on a first-come, first-serve basis. If you wish to present at the public meeting, please submit your request and a summary of your presentation to Karen Strambler the contact person listed in this document. Requests should be identified with the docket number listed in brackets in the heading of this document. (To ensure timely handling, the outer envelope should be clearly marked with the docket number listed in brackets in the heading of this document and the statement ''Prescription Drug Importation Public Meeting.'')

Speakers must submit requests for presentations along with a short summary of their presentation by close of business on March 30, 2004. Presenters must send final electronic presentations, if any, in PowerPoint, Microsoft Word, or Adobe Portable Document Format (PDF) to Karen Strambler the contact person listed in this document by close of business on April 7, 2004.

The public docket will formally remain open until June 1, 2004, and we encourage commenters to submit written and electronic comments before that date. However, FDA recognizes that there may be a need for further public input, and will be prepared to accept additional comments beyond this date as necessary. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Requests to present should contain the following information:

- Presenter's name;
- Address;
- Telephone number;
- E-mail address;
- Fax number;
- Affiliation, if any;
- Summary of the presentation; and
- Approximate amount of time requested for the presentation.

FDA encourages persons and groups having similar interests to consolidate their information and present it through a single representative, if possible, to enable a broad range of views to be presented. After reviewing the requests to present, the agency will schedule each appearance and notify each participant by e-mail or telephone of the time allotted to the participant and the approximate time the participant's presentation is scheduled to begin.

Presenters must send final electronic presentations, if any, in Microsoft PowerPoint, Microsoft Word, or PDF to Karen Strambler the contact person listed in this document by close of business on April 7, 2004.

If you need special accommodations due to disability, please inform Elizabeth French, Office of Policy (HF–11), Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, rm. 14–101, Rockville, MD 20857, 301–827–3360, FAX: 301–594–6777, e-mail: *efrench@oc.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On December 8, 2003, President Bush signed the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (Medicare Modernization Act) (Public Law 108–173). Section 1121 of this legislation gives the Secretary of HHS (the Secretary) the authority to implement a system in the United States for the importation of Canadian prescription drugs. However, the Secretary is permitted to implement such a system only if he is first able to certify to the Congress that it would be safe and cost-effective. Section 1122 of this legislation also directs the Secretary to conduct a study that examines whether and under what circumstances drug importation could be conducted safely, and what its likely consequences would be for the health, medical costs, and development of new medicines for American patients. To comply with the Congressional mandate, the Secretary has formed the Task Force on Drug Importation to advise and assist HHS in this study. The Task Force plans to consider several issues in the study, including several that Congress specifically asked HHS to consider. To assist in this effort we are asking for public comment on the following issues, which the Conference Report to the Medicare Modernization Act directs us to address in the study:

- *Impact of Unapproved Drugs*: What is the scope and volume of unapproved drugs entering the United States through mail shipments and at border crossings? What are the safety concerns posed by these products? What evidence exists to substantiate these concerns? Can they be quantified? What is the scope and

volume of FDA-approved drugs commercially available in other countries?

• *FDA's Ability to Assure Safety*: What should FDA do to assure safety of imported products? Should FDA examine all imports, or should a sampling method, along with testing, be used to assure safety? What resources would FDA need for different levels of oversight, which could include visual inspection, sampling, and other testing methods to determine quality? Is there a need for, and what is the feasibility of, modifications to the U.S. pharmaceutical distribution system that would help to ensure the safety of drug products imported into the United States under section 1121 of the Prescription Drug, Improvement and Modernization Act of 2003?

• *Regulatory/Legislative Issues*: What, if any, limitations in current legal authorities, such as sections 505, 502, and 801 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355, 352, and 381), may inhibit the Secretary's ability to certify that prescription drugs imported into the United States from Canadian wholesalers or pharmacies are safe? What, if any, limitations in current legal authorities may inhibit the Secretary's ability to certify whether the imported drugs comply with sections 505, 502, and 501 of the act (21 U.S.C. 351) (e.g., Are the drugs approved by FDA?, Do they contain appropriate labeling?, Are they manufactured according to current Good Manufacturing Practice)? If FDA could not assure the same level of safety for imported drugs as consumers expect from drugs purchased at a State-licensed pharmacy, what level of risk would be acceptable?

In what ways would importation of drugs, if permitted under section 1121 of the Medicare Modernization Act, impact U.S. and international intellectual property rights as well as obligations under existing trade agreements? Are there additional legal protections needed for effective enforcement of these rights and agreements?

• *Technology*: What anti-counterfeiting technologies are available and feasible to use to improve the safety of products in the domestic market as well as to prevent the importation of unapproved or counterfeited drug products? What costs would be associated with the implementation of such technologies?

• *Financial Impact*: What would be the short and long term financial impact on drug prices, on drug manufacturers, on pharmacies, on wholesalers, and on patients if section 1121 were to be implemented? What other system costs could be associated with importation of pharmaceuticals from Canada and other countries into the United States?

• *Research and Development*: What would be the impact on research and development of drugs and the associated impact on consumers and patients, if section 1121 of the Prescription Drug, Improvement and Modernization Act of 2003 were to be implemented? Would a reduction in domestic pharmaceutical sales result over time in reduced investment in developing new drugs for the future?

• *Liability Issues*: What, if any, liability concerns would exist for entities in the U.S. pharmaceutical distribution system if importation of drugs from Canada or another country were permitted? If liability concerns do exist, what liability protections do you believe should be implemented?

• *Regulation by Foreign Health Agencies*: What protections do other countries have in place to ensure the safety of drugs that are exported or transshipped from their country to the United States? If these protections are lacking, to what extent are foreign health agencies willing or able to implement new or additional protections to ensure safety of exported or transshipped drugs?

II. Comments

Interested persons should submit to the Division of Dockets Management (see *Registration and Requests for Oral Presentation*) written or electronic comments regarding this document by June 1, 2004. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be reviewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Transcripts

Transcripts of the public meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page or a CD at a cost of $14.25 each.

IV. Electronic Access

Persons with access to the Internet may obtain additional information on the public meeting at *http://www.fda.gov/importeddrugs*.

Dated: March 15, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–6145 Filed 3–16–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG 153172–03]

RIN 1545–BB25

Loss Limitation Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations under sections 337(d) and 1502 of the Internal Revenue Code relating to the deductibility of losses recognized on dispositions of subsidiary stock by members of a consolidated group, the consequences of treating subsidiary stock as worthless, and when stock of a member of a consolidated group may be treated as worthless. The temporary regulations apply to corporations filing consolidated returns. The text of the temporary regulations published in this issue of the **Federal Register** also serves as the text of these proposed regulations.

DATES: Written or electronic comments must be received by June 16, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–153172–03), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–153172–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20044. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *http:// www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Regarding the regulations under section 337(d), Mark Weiss (202–622–7790) of the Office of Associate Chief Counsel (Corporate), and regarding the regulations under section 1502, Lola L. Johnson (202–622–7550) of the Office of Associate Chief Counsel (Corporate); regarding submission of comments and/or requests for a hearing, Sonya M.

Cruse (202–622–4693) of the Office of Procedure and Administration (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

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 337(d) and section 1502. 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 is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations, which tend to be larger businesses. Therefore a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of the regulations under section 337(d) is Mark Weiss, Office of Associate Chief Counsel (Corporate). The principal author of the regulations under section 1502 is Lola L. Johnson, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury participated in their development.

Proposed 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 as follows:

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

Par. 2. Section 1.337(d)–2(c)(2) is added to read as follows:

§ 1.337(d)–2 Loss limitation window period.

[The text of this proposed section is the same as the text of § 1.337(d)–2T published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.1502–35(f)(1) is added to read as follows:

§ 1.1502–35 Transfers of subsidiary member stock and deconsolidations of subsidiary members.

[The text of this proposed section is the same as the text of § 1.1502–35T published elsewhere in this issue of the **Federal Register**].

Par. 4. In § 1.1502–80, paragraph (c) is revised to read as follows:

§ 1.1502–80 Applicability of other provisions of law.

(c) [The text of this proposed § 1.1502–80(c) is the same as the text of § 1.1502–80T(c) published elsewhere in this issue of the **Federal Register**].

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–6141 Filed 3–17–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–03–167]

RIN 1625–AAOO

Safety Zone: Atlantic Intracoastal Waterway, Vicinity of Marine Corps Base Camp Lejeune, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend safety zone regulations for the Atlantic Intracoastal Waterway (AICW) and connecting waters, in the vicinity of Marine Corps Base Camp Lejeune, North Carolina. The proposed amendment would provide for additional closures of the AICW of up to 4 hours for Naval weapons training and revise phone numbers for Marine Safety Office Wilmington listed in the regulation. The 4-hour closure periods are necessary to ensure the safety of vessels in this area while facilitating military training and the ammunition certification processes.

DATES: Comments and related material must reach the Coast Guard on or before June 16, 2004.

ADDRESSES: You may mail comments and related material to Commanding Officer, Coast Guard Marine Safety Office, 721 Medical Center Drive Suite 100, Wilmington, NC, 28401. The Port Operations department of Marine Safety Office Wilmington maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at U.S. Coast Guard Marine Safety Office, 721 Medical Center Drive, Suite 100, Wilmington, NC 28401 between 9 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Charles A. Roskam II, Chief, Port Operations, USCG Marine Safety Office Wilmington, telephone number (910) 772–2207.

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 CGD05–03–167, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of received comments.

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for a meeting by writing to Commanding Officer, Coast Guard Marine Safety Office, 721 Medical Center Drive Suite 100, Wilmington, NC 28401, at the

address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold it at a time and place announced in a separate notice in the **Federal Register**.

Background and Purpose

The Coast Guard proposes an amendment to the safety zone in the Atlantic Intracoastal Waterway and connecting waters in the vicinity of Marine Corps Base Camp Lejeune, North Carolina. The existing regulations do not account for live firing of weapons from Naval vessels located offshore on the Atlantic Ocean. Projectiles from these live fire operations sometimes travel across the AICW to the impact area on Camp Lejeune.

Current Naval weapons training and ammunition certification requirements necessitate extended periods of live fire. AICW closure periods longer than those currently specified in the existing regulations are necessary to ensure the safety of vessels in this area and facilitate military training and ammunition certification processes.

Discussion of Proposed Rule

This proposed rule includes a revision allowing for closure of the AICW for periods of up to 4 hours for Naval gunnery live fire exercises. This proposed rule will also revise the contact number for the COTP at the Marine Safety Office Wilmington.

This proposed rule addresses operational conditions that were not considered when the existing regulation was promulgated in 1998 (63 FR 58636, Nov. 2, 1998). Naval gunnery live fire operations are conducted crossing the AICW from offshore on the Atlantic Ocean in the vicinity of the N–1/BT3 impact area and impacting areas in Camp Lejeune. Live fire periods of up to 4 hours are necessary to complete weapons training and ammunition certification processes. The extended closure periods will occur approximately twice a month, but no more than 30 times per year, and only during daylight hours.

This proposed rule, differentiating between Marine Artillery and Naval gunnery live fire exercises, retains the current 1-hour transit schedule during Marine Corps artillery live fire while permitting closure of the AICW for periods of up to 4 hours during Naval gunnery live fire exercises. During Naval gunnery live fire exercises; the waterway will be opened for a minimum of 1 hour following each 4-hour closure to allow for the transit of vessels. The COTP Wilmington will announce specific closure times by Broadcast Notice to Mariners and Local Notice to Mariners. In addition, due to recent change of location of Marine Safety Office Wilmington, COTP contact numbers have been changed to 1–(877) 229–0770 or (910) 772–2200; the regulation will be amended to reflect these changes. All other provisions of the existing regulation shall remain unchanged.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This rule only affects a small portion, less than two miles, of the AICW in North Carolina. The proposed regulations have been tailored in scope to impose the least impact on maritime interests, yet provide the level of safety necessary for such an 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 economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The Coast Guard expects a minimal economic impact on a substantial number of small entities due to this rule because little commercial traffic transits this area of the AICW. Also, on average, a very small amount of recreational traffic travels this portion of the AICW.

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 to Commanding Officer, Coast Guard Marine Safety Office, 721 Medical Center Drive Suite 100, Wilmington, NC 28401, explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. 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 U.S. Coast Guard Marine Safety Office Wilmington, LCDR Chuck Roskam, Chief, Port Operations, listed under **FOR FURTHER INFORMATION CONTACT**.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of

Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. 701, 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5. Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. In § 165.514 amend paragraph (b) by adding the paragraph heading ''*Regulations.*'' immediately before the word ''Notwithstanding''; amend paragraph (c) by adding the paragraph heading ''*General information.*'' immediately before ''(1) The COTP Wilmington''; amend paragraph (c)(1) by adding the paragraph heading ''*Announcements.*'' immediately before the words ''The COTP Wilmington'', revise paragraphs (c)(2) and (d), and add paragraph (c)(3) to read as follows:

§ 165.514 Safety Zone: Atlantic Intracoastal Waterway, vicinity of Marine Corps Base Camp Lejeune, North Carolina.

* * * * *

(b) *Regulations.* * * *

(c) *General information.* (1) *Announcements.* * * *

(2) *Camp Lejeune artillery operations.* Artillery weapons firing over the AICW from Marine Corps Base Camp Lejeune will be suspended and vessels permitted to transit the specified 2-nautical-mile firing area for a 1-hour period beginning at the start of each odd-numbered hour local time (*e.g.*, 9 a.m, 1 p.m.) A vessel may not enter the specified firing area unless it will be able to complete its transit of the firing area before firing exercises are scheduled to re-start.

(3) *Atlantic Ocean Naval Gunnery live fire operations.* Naval gunnery live fire operations over the AICW from off shore on the Atlantic Ocean may be conducted for periods not to exceed 4 hours, then suspended and vessels permitted to transit the specified two-mile firing area for a minimum of one hour before firing may resume. A vessel may not enter the specified firing area unless it will be able to complete its transit of the firing area before firing exercises are scheduled to re-start.

(d) *Contact information.* U.S. Navy safety vessels may be contacted on VHF marine band radio channels 13 (156.65 MHz) and 16 (156.8 MHz). The Captain of the Port may be contacted at the Marine Safety Office Wilmington, NC by telephone at 1–(877) 229–0770 or (910) 770–2200.

Dated: March 3, 2004.

Jane M. Hartley,

Captain, U.S. Coast Guard, Captain of the Port, Wilmington, NC.

[FR Doc. 04–6036 Filed 3–17–04; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36, 51, 52, 53, 54, 63, 64 and 69

[WC Docket No. 02–313; FCC 03–337]

Biennial Regulatory Review of Regulations Administered

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on whether certain rules should be repealed or modified because they are no longer necessary in the public interest. We intend to consider the comments received pursuant to this *Notice of Proposed Rulemaking* and issue one or more orders to repeal or modify the applicable rules, as appropriate.

DATES: Comments are due on or before April 19, 2004. Reply comments are due on or before May 3, 2004. Written comments on the proposed information collection(s) must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before April 19, 2004.

ADDRESSES: All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any Paperwork Reduction Act (PRA) comments on the information collection(s) contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*, and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to *Kim A. Johnson@omb.eop.gov* or by fax to (202) 395–5167. Parties should also send three paper copies of their filings to

Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5–B540, Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Paul Garnett, Legal Counsel, Wireline Competition Bureau, (202) 418–2332, TTY (202) 418–0484. For additional information concerning the information collection(s) contained in this document, contact Judith B. Herman at (202) 418–0214, or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* (NPRM) in WC Docket No. 02–313, FCC 03–337, released on January 12, 2004. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

I. Introduction

1. Section 11 of the Communications Act of 1934, as amended (the Act) directs the Commission to review biennially its regulations that apply to the operations or activities of telecommunications service providers; and determine whether those regulations are ''no longer necessary in the public interest as the result of meaningful economic competition between providers of such service.'' The Commission must then modify or repeal any such regulations that are no longer necessary in the public interest. Consistent with these obligations, we adopted a Report in 2002 addressing certain legal and administrative matters relating to the biennial regulatory review process.

2. Concurrent with the release of the *2002 Report*, March 14, 2003 we released the *2002 Biennial Regulatory Review Staff Reports*, prepared by several of the Commission's operating Bureaus and the Office of Engineering and Technology. In each *Staff Report*, the Bureau or Office summarized its review of the rules under its purview to determine whether to recommend that the Commission modify or repeal such rules. We indicated in the *2002 Report* that the Commission would, based on these *Staff Reports*, issue notices of proposed rulemaking to repeal or modify regulations that may no longer be in the public interest. By this *NPRM*, we initiate one such proceeding for certain rules reviewed by the Wireline Competition Bureau (WCB or the Bureau).

II. Discussion

A. Part 1—Practice and Procedure

3. *Subpart E—Complaints, Applications, Tariffs, and Reports Involving Common Carriers.* Part 1 of the Commission's rules prescribes general rules of practice and procedure for the Commission to follow in carrying out its responsibilities. Section 1.815 requires common carriers with 16 or more full-time employees to file an annual employment report with the Commission (FCC Form 395). This report provides statistical information on the racial, ethnic, and gender makeup of a carrier's work force in nine specific job categories. The rule was adopted to enable the Commission to monitor industry trends in minority and female employment and to raise appropriate questions regarding these patterns. Because federal and state equal employment opportunity (EEO) agencies collect identical or similar information, commenters stated that § 1.815 imposes a needless paperwork burden on the carriers.

4. Additionally, since 1994, licensees have been able to use FCC Form 395 to file annual reports of employment-related discrimination complaints. These reports must be filed by *all* licensees, regardless of the number of employees, pursuant to §§ 21.307(d), 22.321(c), and 23.55(d) of the Commission's rules. Pursuant to these requirements, any complaint filed against a carrier involving EEO violations of any federal, state, territorial, or local laws must be reported to this Commission. Such reports were intended to serve as a means by which the Commission could monitor and investigate carrier practices ''indicating a general pattern of disregard of equal employment practices.''

5. We seek comment on whether the Commission should continue to require carriers to file annually FCC Form 395 and the report of employment-related discrimination complaints. Specifically, we seek comment on whether this collection is necessary to identify or address issues relating to unlawful discrimination by common carriers, given the availability of similar information from other sources. For example, §§ 21.307, 22.321, and 23.55 of the Commission's rules provide mechanisms by which complaints alleging unlawful discrimination may be filed against carriers, and the Commission investigates these complaints or refers them to the EEOC where appropriate. We also seek comment on whether Commission action to modify or eliminate form 395 is appropriate given the efforts of the Advisory Committee on Diversity for Communications in the Digital Age. Specifically, we seek comment on whether this information is useful to the Advisory Committee. We also seek comment on whether continued monitoring of common carrier employment practices by the Commission pursuant to § 1.815 and utilizing FCC Form 395 is necessary in the public interest, or whether other available sources provide sufficient information for parties to rely on in filing EEOC complaints.

III. Part 36—Jurisdictional Separation Procedures

6. The part 36 rules are designed to recognize the dual state-federal system of telecommunications regulation, with interstate communications regulated at the federal level. They contain procedures and standards for dividing telephone company investment, revenues, expenses, taxes, and reserves between the state and the federal jurisdictions. The division of costs between the state and federal jurisdictions is necessary for the calculation of state and federal earned rates of return. In addition to allocating costs between the federal and state jurisdictions, part 36 also serves a universal service function by permitting carriers that serve high-cost areas to allocate additional local loop costs to the interstate jurisdiction and to recover those costs through the high-cost universal service support mechanism, thus making intrastate telephone service in high-cost areas more affordable. As described below, we seek comment on the Bureau's recommendations to modify or repeal certain outdated and expired provisions in part 36, and propose modification or repeal of other provisions that may no longer be necessary in the public interest.

7. *Subpart A—General.* We seek comment on certain proposed modifications to this subpart to conform with current rules and policies. First, we propose modifying paragraph (ii) of § 36.2(b)(3), which sets forth the method for apportioning telecommunications plant used jointly for state and interstate operations, to indicate that ''holding time minutes'' is the basis for measuring the use of both local and toll switching plant, and to correct the erroneous removal of the provision for local switching investment from this section. We also propose modifying § 36.2(b)(3)(iv) to reflect the change from the subscriber plant factor (SPF) to the

25 percent Gross Allocator for exchange plant, to conform with our current rules and policies. We seek comment on these proposals.

8. *Subpart B—Telecommunications Property.* We propose modifying § 36.125(f) to specify how the weighting factors should be applied in apportioning certain investment for study areas with fewer than 50,000 access lines. Additionally, several sections in this subpart contain references to dates that have passed or provisions that have expired by their own terms. For example, §§ 36.154(d) through (f) regarding interstate allocation of certain costs for the years 1988 through 1992 have expired, and thus appear to be no longer applicable. We therefore propose to repeal these sections, as well as references to §§ 36.154(d) through (f) found in § 36.154(c). We seek comment on these proposals.

9. *Subpart F—Universal Service Fund.* The Bureau has recommended repeal of certain provisions in this subpart that have expired by their own terms. They include §§ 36.631(a) and (b), which set forth regulations for calculating interstate expense adjustment until December 31, 1997, and § 36.641, addressing transitional expense adjustment, which is no longer applicable. We believe that these provisions are no longer necessary because they have expired by their own terms, and thus propose to repeal them. Finally, we propose to modify § 36.631(d) to specify that this provision applies only to non-rural telephone companies serving study areas reporting more than 200,000 working loops. We seek comment on these proposals.

10. *Miscellaneous Provisions.* In addition, we seek comment on whether to remove all references to Teletypewriter Exchange Service (TWX) from part 36 of our rules. No carrier has reported data on TWX since the Automated Reporting Management Information System (ARMIS) database was established in 1988, and references to TWX were removed from the ARMIS 43–04 report in 1999. We seek comment on whether to retain the references in part 36 to TWX service because carriers are still offering the service. Otherwise, we propose to delete all references to TWX service from part 36 of our rules, and seek comment on this proposal.

11. Finally, we seek comment on whether, given that activities related to the provision of payphone service have been deregulated, certain provisions in part 36 relating to payphone service should be eliminated. Specifically, we propose deleting the last sentence both in § 36.142(a) and § 36.377(a)(7), and seek comment on this proposal.

IV. Part 42—Preservation of Records of Communications Common Carriers

12. Part 42 of the Commission's rules sets forth rules governing the preservation of records of communications common carriers, including all accounts, records, memoranda, documents, papers and correspondence prepared by or on behalf of such carriers. Part 42 was established to ensure the availability of carrier records needed by the Commission to meet its regulatory obligations. In addition, part 42 serves the public interest by giving consumers access to information about the rates, terms, and conditions for interstate interexchange services.

13. In the *2002 WCB Staff Report*, December 31, 2002, the Bureau recommended that the Commission initiate a proceeding to examine whether the part 42 rules should be modified or repealed, based on its finding that it is unclear whether there are reasonable and less costly alternatives that would ensure that accurate carrier records are maintained. WCB specifically excluded §§ 42.10 and 42.11 from the recommendation, however, citing to support in the comments for retaining these sections, and indicating that the Commission recently addressed them in a rulemaking. These sections prescribe the public disclosure and information maintenance requirements with which non-dominant interexchange carriers must comply, which include making available to the public information on the rates, terms, and conditions of their international and interstate interexchange services. We agree with the Bureau that consumers should continue to have available to them this information about carriers' rates, terms, and conditions, and therefore will not revisit whether the §§ 42.10 and 42.11 remain necessary in the public interest at this time.

14. Because we also agree with the Bureau that the remaining rules in part 42 merit a review to determine whether there are reasonable and less costly alternatives for maintaining carrier records, we seek comment on the continuing usefulness of §§ 42.1 through 42.9 in their current form. Specifically, we seek proposals on less costly and more efficient ways to collect, preserve, and maintain carrier records and reports. Parties recommending that we change these procedures should specifically address the likely effect on the ability of the Commission, consumers, and other parties (such as those responsible for law enforcement) to access this important information. We make no specific proposal to modify or repeal these rules at this time, but will determine whether further rulemaking activity is warranted based on the comments received.

V. Part 51—Interconnection

15. Part 51 of the Commission's rules implements §§ 251 and 252 of the Act. Most significantly, these provisions require that incumbent local exchange carriers (LECs) open their networks to competition, and thus, these provisions are critical to fostering local exchange and exchange access competition as envisioned by Congress. Section 251 establishes pro-competitive requirements for telecommunications carriers, LECs, and incumbent LECs; and provides that all telecommunications carriers have a duty to interconnect with other telecommunications carriers. Section 252 establishes procedures for negotiating, arbitrating, and approving interconnection agreements, and provides for pricing standards, including pricing of services offered for resale. We seek comment on certain provisions in this subpart that, for various reasons, may no longer be necessary in the public interest.

16. *Subpart C—Obligations of All Local Exchange Carriers.* Section 51.211 provides the toll dialing parity implementation schedule for LECs and Bell Operating Companies (BOCs). The section contains a number of expired deadlines by which LECs and BOCs were required to implement toll dialing parity and/or notify the Commission of their failure to do so, none of which appear to have any remaining relevance. We therefore propose to repeal §§ 51.211(a) though (e), and seek comment on this proposal. We also seek comment on whether paragraph (f), which defines the term ''in-region, interLATA toll service'' as it is used in §§ 51.211 and 51.213, should be retained if we repeal paragraphs (a) through (e).

17. Section 51.213(c) also contains a number of expired deadlines, none of which appear to have any remaining relevance. Accordingly, we propose to repeal paragraph (c). We also propose to repeal paragraph (d), given that this paragraph only provides procedural rules for handling implementation plans filed pursuant to paragraph (c), and seek comment on these proposals.

18. *Subpart D—Additional Obligations of Incumbent Local Exchange Carriers.* Sections 51.325 through 51.335 comprise the Commission's network change

disclosure rules. These rules require incumbent LECs to ''provide reasonable public notice of changes in the information necessary for the transmission and routing of services using local exchange carriers' facilities or networks, as well as of any other changes that would affect the interoperability of those facilities or networks.'' The Commission found that these rules were necessary to ensure that competitors receive prompt and accurate notice of changes that could affect their ability to interconnect with the incumbent's network. The Bureau suggested in the *2002 WCB Staff Report*, however, that the procedures for disclosing network changes may have become unnecessarily complicated in light of carriers' ability to provide notice of changes and other information via the Internet. Since the issuance of the *2002 WCB Staff Report*, the Commission amended these rules in the *Triennial Review Order*, 68 FR 52276 (September 2, 2003), as part of its fiber-to-the-home (FTTH) unbundling analysis, relying on the Commission's role in the public notice disclosure process as a critical means of notifying competitors of incumbent LECs' plans to replace copper loops or copper subloops with fiber. That decision recognized the importance of public disclosure of planned copper loop retirement and sought to ensure that competitive LECs maintain access to loop facilities where necessary, and modified the rules accordingly.

19. Although the Commission recently strengthened the network disclosure rules in certain respects as described above, we nevertheless believe that the Commission should streamline one aspect of these rules. Specifically, we propose deleting § 51.329(c)(3) of the Commission's rules that requires that paper and diskette copies of the incumbent LEC's public notice or certification be sent to the Chief of the Bureau. We find that this requirement is no longer necessary to the public interest. Due to the other public filing and notification provisions of this section and the continual review by Commission staff of these filings, direct service of a copy of these submissions upon the Chief of the Bureau represents an unnecessary expenditure of resources. However, we do not extend this tentative conclusion to remove all obligations to notify the Commission, as some commenters have suggested. In light of the importance we placed in the *Triennial Review Order* on the modifications to our network disclosure rules, we do not believe that Internet posting is a sufficient method of disclosure. Given the modifications to our network change disclosure rules made in the *Triennial Review Order*, we seek comment on whether we should modify § 51.329(c)(1), which enumerates the specific titles that incumbent LECs must use when providing public notice, or certification of public notice, of network changes. Specifically, we seek comment on whether modifying our rules by adding specific titles to identify notices of replacement of copper loops or copper subloops with FTTH loops would assist both incumbent LECs and other parties in determining the applicable notice rules.

20. *Subpart F—Pricing of Elements.* Section 51.515 of the Commission's rules provides that neither interstate access charges nor comparable intrastate access charges shall be assessed by an incumbent LEC on purchasers of unbundled elements. Paragraphs (b) and (c) of that section, however, permit incumbent LECs to assess certain interstate and intrastate access charges for a limited period of time, but in no event after June 30, 1997. These provisions appear to be no longer applicable because their effective dates have expired. Accordingly, we propose to repeal §§ 51.515 (b) and (c), and seek comment on this proposal.

VI. Part 52—Numbering

21. Part 52 implements the requirements of 251(e) of the Act, which gives the Commission exclusive jurisdiction over those portions of the North American Numbering Plan (NANP) that pertain to the United States. Part 52 contains rules governing the administration of the NANP, as well as rules that are designed to ensure that users of telecommunications services can retain, at the same location, their existing telephone numbers when they switch from one local exchange telecommunications carrier to another. We seek comment on various provisions in this part to determine whether they remain necessary in the public interest.

22. *Subpart A—Scope and Authority.* On December 23, 2002, WCB took action to allow American Samoa to participate in the NANP and requested that the North American Numbering Plan Administrator (NANPA) set aside ten central office (or NXX) codes in the 684 area code for assignment to carriers operating in American Samoa. We therefore propose to affirm the Bureau's action by updating § 52.5(c) to include American Samoa on the list of U.S. territories participating in the NANP, and seek comment on this proposal.

23. *Subpart B—Administration.* Through a series of Reports and Orders issued since the passage of the 1996 Act, the Commission has undertaken a more active role in establishing numbering policy and regulations for the industry to follow. In addition, several aspects of numbering administration have been delegated to state commissions. We therefore propose several modifications to this subpart to more accurately reflect the current roles of the Commission and the industry in numbering administration.

24. The national numbering administrators, which include the NANPA, the Pooling Administrator (PA), and the billing and collection agent are currently selected through a competitive bidding process pursuant to the Federal Acquisitions Regulations (FAR). Thus, the North American Numbering Council (NANC), the Commission's advisory committee for numbering issues, no longer is responsible for recommending an entity to serve as the NANPA. We therefore propose to repeal § 52.11(d). We also propose to modify §§ 52.13(b) and 52.13(b)(3) to reflect the current role of the Commission in directing policy on and accommodating current and future numbering needs. We further propose to delete references to the Central Office Code Utilization Survey (COCUS), which is no longer used by the NANPA to collect number utilization and forecast information from carriers. We seek comment on these proposals.

25. We also propose to repeal portions of § 52.15 of the Commission's rules. Paragraph (c) sets forth regulations for telecommunications carriers that perform central office code administration. All such administration is currently performed by the NANPA, so these provisions are no longer applicable. Similarly, paragraphs (d) and (e) address CO code administration functional requirements, and describe procedures for the initial transfer of numbering administration functions from Bellcore and certain carriers to the first NANPA. Because the transfer of these functions occurred more than five years ago, and because the NANPA's functional requirements are detailed in § 52.13, Commission orders, and industry guidelines, it appears that portions of paragraphs (d) and (e) are no longer applicable. We therefore seek comment on our proposal to modify or delete these provisions.

26. *Subpart C—Number Portability.* We also seek comment on several proposed changes to our local number portability (LNP) rules to reflect the current status of LNP implementation. Specifically, we propose to update § 52.23 to reflect the passage of the deadline for deployment of LNP in the

largest 100 metropolitan statistical areas (MSAs). Specifically, § 52.23(b) sets forth requirements relating to the initial deployment of wireline LNP, which was completed in 1998. Accordingly, we seek comment of whether these rules should be modified. Similarly, §§ 52.23(d) through (f) contain provisions relating to the original deployment schedule for wireline LNP. We also seek comment on whether these rules should be modified. In addition, because the field tests discussed in § 52.23(g) have been completed, this provision is no longer necessary and we propose to repeal it as well. Because long-term database methods for number portability have been developed and implemented, there also appears to no longer be a need for the regulations in §§ 52.27 and 52.29 governing the implementation of transitional measures. We therefore propose to modify these rules. We seek comment on these proposals.

27. Finally, the November 24, 2003 deadline for implementation of LNP by Commercial Mobile Radio Services (CMRS) recently passed. We therefore seek comment on whether certain provisions in § 52.31 of the Commission's rules should be modified. First, we propose to repeal § 52.31(c), which, in its current form, has expired by its own terms. We seek comment on this proposal. Further, because §§ 52.31 (d) through (e) contain provisions relating to the original deployment schedule for wireline LNP we seek comment on whether these sections should be retained or modified.

VII. Part 53—Special Provisions Concerning Bell Operating Companies

28. Part 53 of the Commission's rules generally implements the structural safeguards pursuant to section 272 and certain requirements in section 271 of the Act. Section 272 establishes safeguards applicable to BOC equipment manufacturing, provision of in-region interLATA telecommunications service, and provision of interLATA information services (other than electronic publishing and alarm monitoring). Section 271 prescribes certain requirements concerning joint marketing of local exchange and long distance services.

29. *Subpart B—Bell Operating Company Entry Into InterLATA Service.* Section 53.101 provides that BOCs serving more than 5 percent of the national presubscribed access lines may not jointly market their local and interLATA services until the earlier of the BOCs' authorization to provide in-region, interLATA services or February 8, 1999. Because the expiration date of the prohibition against joint marketing for all BOCs has passed, § 53.101 appears to have expired by its own terms. Thus, we propose to repeal this provision as no longer necessary in the public interest, and seek comment on this proposal.

G. Part 54—Universal Service

30. Sections 214(e) and 254 of the Act direct the Commission to establish specific, predictable, and sufficient mechanisms to preserve and advance universal service. Part 54 promotes universal service by establishing explicit mechanisms to ensure that all consumers, including consumers living in rural, insular, and high-cost areas as well as low-income consumers, have access to affordable telecommunications services. Part 54 is designed to accomplish these goals in a competitively neutral manner by collecting support from every telecommunications carrier that provides interstate telecommunications service, and by making support available on a technologically neutral basis to any eligible service provider. We seek comment below on whether certain provisions in this Part should be modified or repealed because they are no longer necessary in the public interest.

31. *Subpart C—Carriers Eligible for Universal Service Support.* We seek comment on whether there are any state commissions that have not yet designated as an eligible telecommunications carrier a carrier that sought such a designation before January 1, 1998, pursuant to § 54.201(a)(2). If not, it appears that this provision is no longer necessary, and we therefore propose to delete it. We seek comment on this proposal.

32. *Subpart D—Universal Service Support for High Cost Areas.* Sections 54.303(b)(1) through (3) appear to have expired by their own terms. Nevertheless, we note that these provisions may assist carriers in calculating long term support (LTS). Accordingly, we propose retaining §§ 54.303(b)(1) through (3) of our rules and seek comment on this proposal. We also seek comment on whether §§ 54.313(d)(1) and (2), which contain deadlines for the first and second program years, remain necessary. Because these provisions appear to have expired by their own terms, we propose to delete them. We seek comment on this proposal.

33. *Subpart F—Universal Service Support for Schools and Libraries.* Certain provisions in § 54.507(b), particularly paragraphs (1) and (2) regarding funding year 1998–99, appear to have expired by their own terms. We believe, however, that this section may remain necessary to allow proper adjustment of certain prior funding commitments. We therefore propose to retain and update, rather than repeal, this section, and seek comment on this proposal.

34. *Subpart G—Universal Service Support for Health Care Providers.* We propose to eliminate several sections in this subpart that appear to have expired by their own terms. For example, § 54.604(a)(2) addresses contracts signed after July 10, 1997 but ''before the date on which the universal service competitive bid system described in [section 54.603] is operational.'' Because it appears that this time period has expired, we propose to delete this provision. Similarly, §§ 54.604(d), 54.623(b), and 54.623(c)(2) and (3) contain provisions that appear to no longer be applicable. We therefore seek comment on whether they should be repealed in whole or in part. We also propose modifying § 54.623(c)(4) by adding language to reflect that applications submitted within subsequent filing periods will be treated as simultaneously received. We seek comment on these proposals.

H. Part 63—Extension of Lines, New Lines, and Discontinuance, Reduction, Outage and Impairment of Service by Common Carriers; and Grants of Recognized Private Operating Agency Status

35. Section 214 of the Act provides that no carrier shall undertake the construction of a new line or extension of any line, or shall acquire or operate any line, or extension thereof, without first having obtained a certificate from the Commission that the present or future public convenience and necessity require the construction and/or operation of such extended line. Section 214 also provides that no carrier shall discontinue, reduce or impair service to a community without first having obtained a certificate from the Commission that neither the present nor future public convenience and necessity will be adversely affected by such action. Part 63 of our rules implements these provisions. We seek comment below on whether certain of the provisions in this part are no longer necessary in the public interest.

36. *General Provisions Relating to All Applications Under Section 214; Discontinuance.* Section 63.61 provides that any carrier subject to the provisions of section 214, except a non-dominant carrier as defined in our rules, that seeks to discontinue, reduce, or impair service, must file for and receive

authority from the Commission in order to take such action. Section 63.71 requires that any domestic carrier (including non-dominant carriers) must file for and receive authority from the Commission before discontinuing, reducing, or impairing service. The Commission adopted § 63.71 more recently, and clearly intended its requirements to apply to non-dominant domestic carriers. These requirements in fact have been applied to non-dominant domestic carriers consistently since the rule was adopted. Nevertheless, because § 63.61 was mistakenly left unchanged when § 63.71 was adopted, we propose to modify § 63.61 to clear up any confusion about non-dominant domestic carriers' obligation to abide by § 63.71. We also propose to correct the erroneous cross-reference to § 61.3(u) in § 63.61, as the term ''non-dominant carrier'' is defined in § 61.3(y). We further propose to revise §§ 63.61 and 63.71 to make clear that the procedures for the discontinuance, reduction or impairment of international services are governed by § 63.19 of our rules. We seek comment on these proposals.

37. We also propose to correct a discrepancy relating to when customers must file comments with the Commission in response to a carrier's proposed discontinuance, reduction or impairment of service. Section 63.71(a)(5)(i) and (ii) provide boiler plate language for carriers to advise affected customers of a proposed discontinuance, reduction, or impairment of service, and their right to file comments with the Commission within 15 days (30 days for dominant carrier customers) after receipt of said notice. As a practical matter, however, customers have longer than this period because they receive actual notice of the proposed discontinuance before the date of public notice. To illustrate, § 63.71 applications are not deemed filed until the Commission releases public notice of the proposed action, and the publication of this notice generally takes place after the date customers receive notice. Consequently, customers have longer than 15 days (or 30 days if applicant is a dominant service provider) from actual receipt of notice to file comments. We therefore propose to modify these paragraphs to more accurately reflect actual notice periods and procedures. We seek comment on these proposals.

I. Part 64—Miscellaneous Rules Relating to Common Carriers

38. Part 64 of the Commission's rules addresses miscellaneous provisions pertaining to the regulation of common carriers. Subpart M implements section 276 of the Communications Act of 1934, as amended, concerning the provision of payphone service. These rules govern compensation to payphone providers by carriers that receive calls from payphones; require states to review and remove any state regulation that limits market entry and exit by payphone providers; and establish regulations to ensure that individuals with disabilities can use payphones. Subpart T establishes separate subsidiary requirements applicable to the provision of in-region, interstate domestic, interexchange services and in-region international interexchange services by incumbent independent local exchange carriers. We seek comment on whether certain provisions in these Subparts are no longer necessary in the public interest.

39. *Subpart M—Provision of Payphone Service.* Section 64.1330(c) requires that states review and remove payphone regulations that may impose market entry or exit requirements. Because the September 20, 1998, deadline in this provision has passed, it appears to no longer be applicable. We therefore seek comment on whether this provision should be repealed. In the alternative, we seek comment on whether the requirement for state review of regulations remains necessary, and thus whether we should modify or update, rather than eliminate, this provision. We ask parties to address whether and to what extent these requirements should be extended. We also seek specific comment on whether elimination of this requirement would adversely impact competition or the public interest.

40. *Subpart T—Separate Affiliate Requirements.* Section 64.1903(c) contains a deadline for compliance with the requirements of this section that expired more than six years ago. Accordingly, we propose to delete this provision as no longer necessary, and to modify § 64.1903(a) so that its reference to paragraph (c) is removed. We seek comment on these proposals.

J. Part 69—Access Charges

41. Sections 201 and 202 of the Act require that rates, terms, and conditions for telecommunications services be just and reasonable, and prohibit unjust or unreasonable discrimination. Part 69 implements these sections of the Act by establishing rules that perform several major functions, including establishing the rate structure for access charges to be paid by interexchange carriers to local exchange carriers (LECs) for the origination and termination of long distance calls, as well as the access charges to be paid directly by end users; governing how rate-of-return LECs calculate their access charge rates; in conjunction with the part 61 price cap rules, establishing the degree of pricing flexibility available to price-cap LECs; and providing for the establishment of the National Exchange Carrier Association (NECA), which files tariffs on behalf of many of the smaller, rate-of-return LECs.

42. *Subpart B—Computation of Charges.* Sections 69.116 and 69.117 establish methodologies to assess charges on certain interexchange carriers for the universal service fund and lifeline assistance, respectively. These sections provided for an effective period from August 1, 1988, through December 31, 1997; thus, it appears that they have expired on their own terms. Accordingly, we propose to repeal §§ 69.116 and 69.117 as no longer necessary, and seek comment on this proposal.

43. Similarly, § 69.126 provides that incumbent local exchange carriers shall not assess any nonrecurring charges for service connections when an interexchange carrier converts trunks from tandem-switched transport to direct-trunked transport, or when an interexchange carrier orders the disconnection of over-provisioned trunks, until six months after the effective date of tariffs eliminating the unitary pricing option for tandem-switched transport. All carriers to which this section applies have eliminated the unitary pricing option for tandem-switched transport. Thus, this provision does not appear to have any remaining relevance. Accordingly, we propose to repeal § 69.126, and seek comment on this proposal.

44. Section 69.127 provides for the retention of the transport rate structure in effect on August 1, 1991, until tariffs filed pursuant to the *Transport Rate Structure and Pricing Report and Order* become effective. Tariffs filed pursuant to that Report and Order have become effective for all applicable carriers. Therefore, by its own terms, § 69.127 is no longer applicable. Accordingly, we propose to repeal § 69.127, and seek comment on this proposal.

45. *Subpart G—Exchange Carrier Association.* Section 69.612 provides for an effective period from July 1, 1994 through December 31, 1997 for long-term support payments to participants in the National Exchange Carrier Association common line tariff. These provisions are no longer applicable because their effective dates have expired. We therefore propose to repeal this section as no longer necessary, and seek comment on this proposal.

VIII. Procedural Matters

A. Ex Parte Presentations

46. This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

B. Initial Paperwork Reduction Act Analysis

47. This *NPRM* proposes to eliminate or modify in whole or in part certain information collections. As part of a continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this *NPRM,* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this *NPRM;* OMB comments are due April 19, 2004.

C. Initial Regulatory Flexibility Analysis

48. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided. The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for and Objectives of the Proposed Rules

49. In September 2002, the Commission issued Public Notices seeking comment from the public on which rules should be modified or repealed as part of the 2002 Biennial Regulatory Review. The Commission later released a Report addressing certain legal and administrative matters relating to the biennial regulatory review process. Concurrent with the release of the *2002 Report,* the Commission released the *2002 Regulatory Review Staff Reports,* drafted by several of the Commission's operating Bureaus an the Office of Engineering and Technology, which summarized their review of the rules under their purview to determine whether to recommend that the Commission modify or repeal such rules. This *NPRM* seeks comment on rules that the Commission believes may be appropriate for repeal or modification because they are outdated, have expired by their own terms, or as a result of competition may no longer be necessary in the public interest in their current form.

2. Legal Basis

50. The legal basis as proposed for this *NPRM* is contained in sections 1, 3, 4, 201–205, 214, 251, 252, 254, 272, 276, and 403 of the Communications Act of 1934, as amended.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

51. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

52. No new rules are proposed in the *NPRM;* only modifications to or elimination of certain rules. Therefore, the proposals in this proceeding will not likely have a significant (negative) economic impact on service providers, including small entities. In fact, because several information collections are proposed to be eliminated, we expect that any impact on small entities will be positive (*i.e.*, will eliminate economic burdens). Nevertheless, we consider in this IRFA analysis small incumbent local exchange carriers, local exchange carriers, competitive access providers, competitive local exchange carriers, cellular, PCS and other wireless service providers that are small entities.

53. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

54. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs) and ''Other Local Exchange Carriers.''* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to ''Other Local Exchange Carriers.'' The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 55 carriers reported that they were ''Other Local Exchange Carriers.'' Of the 55 ''Other Local Exchange Carriers,'' an estimated 53 have 1,500 or fewer employees and two have more than 1.500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and ''Other Local Exchange Carriers'' are small entities that may be affected by the rules and policies adopted herein.

55. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless small businesses within the two separate categories of Paging and Cellular and Other Wireless Telecommunications. Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. According to the

Commission's most recent data, 1,387 companies reported that they were engaged in the provision of wireless service. Of these 1,387 companies, an estimated 945 have 1,500 or fewer employees and 442 have more than 1,500 employees. Consequently, the Commission estimates that most wireless service providers are small entities that may be affected by the rules and policies adopted herein.

56. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequencies designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, plus the 48 winning bidders in the re-auction, for a total of 231 small entity PCS providers as defined by the SBA and the Commission's auction rules. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as small or very small businesses.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

57. As stated, the Commission does not propose any new rules that would add reporting, recordkeeping, or other compliance requirements. The Commission proposes only to modify or eliminate certain rules, thereby eliminating economic burdens for small entities. For example, the Commission seeks proposals on less costly and more efficient ways to collect, preserve and maintain carrier records and reports pursuant to part 42 of its rules. The Commission also seeks to modify or streamline the procedures for disclosing network changes under part 51 of its rules, as these procedures may have become unnecessarily complicated in light of carriers' ability to provide notice of changes and other information via the Internet. In addition, the Commission seeks comment on whether to continue to require carriers to file annually FCC Form 395, which is used to collect statistical information on the racial, ethnic, and gender makeup of a carrier's work force in nine specific job categories. In this *NPRM,* we therefore seek comment on the types of burdens that might be eliminated and encourage entities, especially small businesses, and to quantify, if possible, the costs and benefits of the proposals.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

58. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

59. The *NPRM* seeks comment on proposals to reduce the administrative burden and cost of compliance for small telecommunications service providers. The Commission has accepted the statutory requirement that an alternative be considered when necessary to protect the interests of small entities. We particularly seek comment from contributors that are ''small business concerns'' under the Small Business Act on the proposals contained in the *NPRM.*

6. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

60. None.

D. Comment Filing Procedures

61. We invite comment on the issues and questions set forth in the *Notice of Proposed Rulemaking* and Initial Regulatory Flexibility Analysis contained herein. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before April 19, 2004, and reply comments on or before May 3, 2004. All filings should refer to WC Docket No. 02–313. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

62. Comments filed through ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number, which in this instance is WC Docket No. 02–313. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message: get form <your e-mail address>. A sample form and directions will be sent in reply.

63. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Parties who choose to file by paper are hereby notified that effective December 18, 2001, the Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at a new location in downtown Washington, DC. The address is 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location will be 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. This facility is the only location where hand-delivered or messenger-delivered paper filings for the Commission's Secretary will be accepted. Accordingly, the Commission will no longer accept these filings at 9300 East Hampton Drive, Capitol Heights, MD 20743. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service (USPS) Express Mail and Priority Mail), must be addressed to 9300 East Hampton Drive, Capitol Heights MD 20743. This location will be open 8 a.m. to 5:30 p.m. USPS first-class mail, Express Mail, and Priority Mail should

continue to be addressed to the Commission's headquarters at 445 12th Street, SW., Washington, DC 20554. USPS mail addressed to the Commission's headquarters actually goes to our Capitol Heights facility for screening prior to delivery at the Commission.

If you are sending this type of document or using this delivery method	It should be addressed for delivery to
Hand-delivered or messenger-delivered paper filings for the Commission's Secretary.	236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002 (8 a.m. to 7 p.m. e.s.t.)
Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail).	9300 East Hampton Drive, Capitol Heights, MD 20743 (8 a.m. to 5:30 p.m.)
United States Postal Service first-class mail, Express Mail, and Priority Mail.	445 12th Street, SW., Washington, DC 20554

All filings must be sent to the Commission's Secretary: Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Suite TW–A325, Washington, DC 20554.

64. Parties who choose to file by paper should also submit their comments on diskette to Paul Garnett, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5C–3115 Washington, DC 20554. The submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case, WC Docket No. 02–313), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleading, preferably in a single electronic file.

65. Regardless of whether parties choose to file electronically or by paper, parties must also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Inc, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Comments and reply comments will be available on ECFS. Comments and reply comments also will be available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. In addition, the full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

66. Comments and reply comments should include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments also must comply with § 1.49 and all other applicable sections of the Commission's rules. Parties should include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the *NPRM* to facilitate our internal review process.

67. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0531 (voice), 202–418–7365 (tty).

IX. Ordering Clauses

68. Pursuant to the authority contained in sections 1, 3, 4(i), 4(j), 201–205, and 403 of the Communications Act of 1934, as amended, this *Notice of Proposed Rulemaking* is adopted.

69. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 36

Communications common carrier, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 51

Communications common carrier, Telecommunications.

47 CFR Part 52

Communications common carrier, Telecommunications, Telephone.

47 CFR Part 53

Communications common carrier, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 54

Communications common carrier, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

47 CFR Part 63

Communications common carriers, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

47 CFR Part 64

Communications common carriers, Radio, Reporting and recordkeeping requirements, Telecommunications, Telegraph, Telephone.

47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 36, 51, 52, 53, 54, 63, 64 and 69 as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (j), 205, 221(c), 254, 403, and 410.

2. Amend § 36.2 by revising paragraphs (b)(3)(ii) and (b)(3)(iv) to read as follows:

§ 36.2 Fundamental principles underlying procedures.

* * * * *

(b) * * *

(3) * * *

(ii) Holding-time-minutes is the basis for measuring the use of local and toll switching plant.

* * * * *

(iv) Message telecommunications subscriber plant shall be apportioned on

the basis of a Gross Allocator which assigns 25 percent to the interstate jurisdiction and 75 percent to the State jurisdiction.

* * * * *

3. Amend § 36.125 by revising the text of paragraph (f) to read as follows:

§ 36.125 Local switching equipment—Category 3.

* * * * *

(f) Beginning January 1, 1998, for study areas with fewer than 50,000 access lines, Category 3 investment is apportioned to the interstate jurisdiction by the application of an interstate allocation factor that is the lesser of either .85 or the sum of the interstate DEM factor specified in paragraph (a)(5) of this section, and the difference between the 1996 interstate DEM factor and the 1996 interstate DEM factor multiplied by a weighting factor as determined by the table below. The Category 3 investment that is not assigned to the interstate jurisdiction pursuant to this paragraph is assigned to the state jurisdiction.

* * * * *

4. Amend § 36.126 by revising paragraphs (e)(2) and (e)(3) to read as follows:

§ 36.126 Circuit equipment—Category 4.

* * * * *

(e) * * *

(2) Interexchange Circuit Equipment Used for Wideband Service—Category 4.22—This category includes the circuit equipment portion of interexchange channels used for wideband services. The cost of interexchange circuit equipment in this category is determined separately for each wideband channel and is segregated between message and private line services on the basis of the use of the channels provided. The respective costs are allocated to the appropriate operation in the same manner as the related interexchange cable and wire facilities described in § 36.156.

(3) All Other Interexchange Circuit Equipment—Category 4.23—This category includes the cost of all interexchange circuit equipment not assigned to Categories 4.21 and 4.22. The cost of interexchange basic circuit equipment used for the following classes of circuits is included in this category: Jointly used message circuits, *i.e.*, message switching plant circuits carrying messages from the state and interstate operations; circuits used for state private line services.

(i) An average interexchange circuit equipment cost per equivalent interexchange telephone termination for all circuits is determined and applied to the equivalent interexchange telephone termination counts of each of the following classes of circuits: Private Line, State Private Line, Message. The cost of interstate private line circuits is assigned directly to the interstate operation. The cost of state private line circuits is assigned directly to the state operation. The cost of message circuits is apportioned between the state and interstate operations on the basis of the relative number of study area conversation-minutes applicable to such facilities.

(ii) The cost of special circuit equipment is segregated among telegraph grade private line services and other private line services based on an analysis of the use of the equipment and in accordance with § 36.126(b)(4). The special circuit equipment cost assigned to telegraph grade and other private line services is directly assigned to the appropriate operations.

* * * * *

5. Amend § 36.142 by revising paragraph (a) to read as follows:

§ 36.142 Categories and apportionment procedures.

(a) *Other Information Origination/Termination Equipment—Category 1.* This category includes the cost of other information origination/termination equipment not assigned to Category 2. The costs of other information origination/termination equipment are allocated pursuant to the factor that is used to subcategory 1.3 Exchange Line C&WF.

* * * * *

6. Amend § 36.152 by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 36.152 Categories of Cable and Wire Facilities (C&WF).

(a) * * *

(1) Exchange Line C&WF Excluding Wideband—Category 1—This category includes C&W facilities between local central offices and subscriber premises used for message telephone, private line, local channels, and for circuits between control terminals and radio stations providing very high frequency maritime service or urban or highway mobile service.

(2) Wideband and Exchange Trunk C&WF—Category 2—This category includes all wideband, including Exchange Line Wideband and C&WF between local central offices and Wideband facilities. It also includes C&WF between central offices or other switching points used by any common carrier for interlocal trunks wholly within an exchange or metropolitan service area, interlocal trunks with one or both terminals outside a metropolitan service area carrying some exchange traffic, toll connecting trunks, tandem trunks principally carrying exchange traffic, the exchange trunk portion of WATS access lines, the exchange portion of private line local channels, and the exchange trunk portion of circuits between control terminals and radio stations providing very high frequency maritime service or urban or highway mobile service.

* * * * *

7. Amend § 36.154 by revising paragraph (c) and by removing paragraphs (d), (e), and (f) and by redesignating paragraph (g) as paragraph (d) to read as follows:

§ 36.154 Exchange Line Cable and Wire Facilities (C&WF)—Category 1—apportionment procedures.

* * * * *

(c) Effective January 1, 1986, 25 percent of the costs assigned to subcategory 1.3 shall be allocated to the interstate jurisdiction.

* * * * *

8. Amend § 36.156 by revising paragraph (b) to read as follows:

§ 36.156 Interexchange Cable and Wire Facilities (C&WF)—Category 3—apportionment procedures.

* * * * *

(b) The cost of C&WF applicable to this category shall be directly assigned were feasible. If direct assignment is not feasible, cost shall be apportioned between the state and interstate jurisdiction on the basis of conversation-minute kilometers as applied to toll message circuits, etc.

* * * * *

9. Amend § 36.212 by revising paragraph (c) to read as follows:

§ 36.212 Basic local services revenue—Account 5000.

* * * * *

(c) Wideband Message Service revenues from monthly and miscellaneous charges, service connections, move and change charges, are apportioned between state and interstate operations on the basis of the relative number of minutes-of-use in the study area. Effective July 1, 2001, through June 30, 2006, all study areas shall apportion Wideband Message Service revenues among the jurisdictions using the relative number of minutes of use for the twelve-month period ending December 31, 2000.

* * * * *

10. Amend § 36.214 by revising paragraph (a) to read as follows:

§ 36.214 Long distance message revenue—Account 5100.

(a) Wideband message service revenues from monthly and miscellaneous charges, service connections, move and change charges, are apportioned between state and interstate operations on the basis of the relative number of minutes-of-use in the study area. Effective July 1, 2001, through June 30, 2006, all study areas shall apportion Wideband Message Service revenues among the jurisdictions using the relative number of minutes of use for the twelve-month period ending December 31, 2000.

* * * * *

§ 36.375 [Amended]

11. Amend § 36.375 by removing paragraph (b)(2) and redesignating paragraphs (b)(3) through (b)(6) as paragraphs (b)(2) through (b)(5).

12. Amend § 36.377 by revising paragraphs (a)(1) introductory text, (a)(2) introductory text, (a)(2)(vii), and (a)(7) introductory text, by removing paragraphs (a)(1)(viii) and (a)(2)(vi), by redesignating paragraph (a)(1)(ix) as paragraph (a)(1)(viii) and redesignating paragraph (a)(2)(vii) as paragraph (a)(2)(vi) to read as follows:

§ 36.377 Category 1—Local business office expense.

(a) * * *

(1) End-user service order processing includes expenses related to the receipt and processing of end users' orders for service and inquiries concerning service. This subcategory does not include any service order processing expenses for services provided to the interexchange carriers. End user service order processing expenses are first segregated into the following subcategories based on the relative number of actual contacts which are weighted, if appropriate, to reflect differences in the average work time per contact: Local service order processing; presubscription; directory advertising; State private line and special access; interstate private line and special access; other State message toll including WATS; other interstate message toll including WATS.

* * * * *

(2) End User payment and collection include expenses incurred in relation to the payment and collection of amounts billed to end users. It also includes commissions paid to payment agencies (which receive payment on customer accounts) and collection agencies. This category does not include any payment or collection expenses for services provided to interexchange carriers. End user payment and collection expenses are first segregated into the following subcategories based on relative total state and interstate billed revenues (excluding revenues billed to interexchange carriers and/or revenues deposited in coin boxes) for services for which end user payment and collection is provided; State private line and special access; interstate private line and special access; State message toll including WATS; interstate message toll including WATS, and interstate subscriber line charge; local, including directory advertising.

* * * * *

(vii) Effective July 1, 2001, through June 30, 2006, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620—Services to the subcategories, as specified in §§ 36.377 (a)(3)(i) through 36.377(a)(3)(vi), based on the relative percentage assignment of the balance of Account 6620 to these subcategories during the twelve-month period ending December 31, 2000. Effective July 1, 2001, through June 30, 2006, all study areas shall apportion TWX billing inquiry expense, as specified in § 36.377(a)(3)(v) among the jurisdictions using relative billed TWX revenues for the twelve-month period ending December 31, 2000. All other subcategories of End User payment and collection expense, as specified in §§ 36.377(a)(2)(i) through 36.377(a)(2)(v), shall be directly assigned.

* * * * *

(7) Coin collection and administration includes expenses for the collection and counting of money deposited in public or semi-public phones. It also includes expenses incurred for required travel, coin security, checking the serviceability of public or semi-public telephones, and related functions. These expenses are apportioned between the State and interstate jurisdictions in proportion to the relative State and interstate revenues deposited in the public and semi-public telephones.

* * * * *

13. Amend § 36.631 by removing paragraphs (a) and (b), by redesignating paragraphs (c) through (e) as paragraphs (a) through (c), and by revising newly redesignated paragraph (b) introductory text to read as follows:

§ 36.631 Expense adjustment.

* * * * *

(b) Beginning January 1, 1998, for study areas reporting more than 200,000 working loops pursuant to § 36.611(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (b)(1) through (b)(4) of this section. After January 1, 2000, the expense adjustment (additional interstate expense allocation) for non-rural telephone companies serving study areas reporting more than 200,000 working loops pursuant to § 36.611(h) shall be calculated pursuant to § 54.309 of this chapter or § 54.311 of this chapter (which relies on this part), whichever is applicable.

* * * * *

§ 36.641 [Removed]

14. Remove § 36.641.

Appendix to Part 36—[Amended]

15. In the Appendix to Part 36-Glossary, remove the following terms and their definitions:

* * * * *

TWX
TWX Connection
TWX Connection-Minute-Kilometers
TWX Switching Plant Trunks

* * * * *

PART 51—INTERCONNECTION

16. The authority citation continues to read as follows:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 225–27, 251–54, 256, 271, 303(r), 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 225–27, 251–54, 271, 303(r) 332, 47 U.S.C. note unless otherwise noted.

§ 51.211 [Removed]

17. Remove § 51.211.

§ 51.213 [Amended]

18. Amend § 51.213 by removing paragraphs (c) and (d).

§ 51.329 [Amended]

19. Amend § 51.329 by removing paragraph (c)(3).

§ 51.515 [Amended]

20. Amend § 51.515 by removing paragraphs (b) and (c) and by redesignating paragraph (d) as paragraph (b).

PART 52—NUMBERING

21. The authority citation continues to read as follows:

Authority: Sections 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332 unless otherwise noted.

22. Amend § 52.5 by revising paragraph (c) to read as follows:

§ 52.5 Definitions.

* * * * *

(c) *North American Numbering Plan* (NANP). The ''North American Numbering Plan'' is the basic numbering scheme for the telecommunications networks located in American Samoa, Anguilla, Antigua, Bahamas, Barbados, Bermuda, British Virgin Islands, Canada, Cayman Islands, Dominican Republic, Grenada, Jamaica, Montserrat, St. Kitts & Nevis, St. Lucia, St. Vincent, Turks & Caicos, Trinidad & Tobago, and the United states (including Puerto Rico, the U.S. Virgin Islands, Guam and the Commonwealth of the Northern Mariana Islands).

* * * * *

§ 52.11 [Amended]

23. Amend § 52.11 by removing paragraph (d).

24. Amend § 52.13 by revising paragraphs (b) introductory text and (c)(4) to read as follows:

§ 52.13 North American Numbering Plan Administrator.

* * * * *

(b) The NANPA shall administer the numbering resources identified in paragraph (d) of this section. It shall assign and administer NANP resources in an efficient, effective, fair, unbiased, and non-discriminatory manner consistent with industry-developed guidelines and Commission regulations. It shall support the Commission's efforts to accommodate current and future numbering needs. It shall perform additional functions, including but not limited to:

* * * * *

(c) * * *

(4) Manage projects such as Numbering Plan Area (NPA) relief (area code relief) planning, Numbering Resource Utilization and Forecast (NRUF) data collection, and NPA and NANP exhaust projection;

* * * * *

25. Amend § 52.15 by removing paragraphs (c) and (e), by redesignating paragraphs (d) through (k) as paragraphs (c) through (i), and by revising paragraph (b)(3) and newly redesignated paragraph (d) to read as follows:

* * * * *

(b) * * *

(3) Conducting the Numbering Resource Utilization and Forecast (NRUF) data collection;

* * * * *

(d) *Central Office (CO) Code Administration functional requirements.* The NANPA shall manage the United States CO code numbering resource, including CO code request processing, NPA code relief and jeopardy planning, and industry notification functions. The NANPA shall perform its CO code administration functions in accordance with the published industry numbering resource administration guidelines and Commission orders and regulations of 47 CFR chapter I.

* * * * *

§ 52.23 [Amended]

26. Amend § 52.23 by removing paragraph (g).

* * * * *

§ 52.27 [Removed]

27. Remove § 52.27.

§ 52.29 [Removed]

28. Remove § 52.29.

§ 52.31 [Amended]

29. Amend § 52.31 by removing paragraph (c).

PART 53—SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES

30. The authority citation continues to read as follows:

Authority: Sections 1–5, 7, 201–05, 218, 251, 253, 271–75, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55 ,157, 201–05, 218, 251, 253, 271–75, unless otherwise noted.

§ 53.101 [Removed]

31. Remove § 53.101.

PART 54—UNIVERSAL SERVICE

32. The authority citation continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

§ 54.201 [Amended]

33. Amend § 54.201 by removing paragraph (a)(2), by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(2) through (a)(3).

§ 54.313 [Amended]

34. Amend § 54.313 by revising paragraph (d) to read as follows:

§ 54.313 State certification of support for non-rural carriers.

* * * * *

(d) Filing deadlines. In order for a non-rural incumbent local exchange carrier in a particular state, and/or an eligible telecommunications carrier serving lines in the service area of a non-rural incumbent local exchange carrier, to receive high-cost support, the State must file an annual certification, as described in paragraph (c) of this section with both the Administrator and the Commission. Support shall be provided in accordance with the following schedule.

* * * * *

35. Amend § 54.604 by revising paragraph (a) to read as follows:

§ 54.604 Existing contracts.

(a) A signed contract for services eligible for support pursuant to this subpart between an eligible health care provider as defined under § 54.601 and a telecommunications carrier shall be exempt from the competitive bid requirements set forth in § 54.603(a) if its signed on or before July 10, 1997.

* * * * *

36. Amend § 54.623 by revising paragraph (c) (4) to read as follows:

§ 54.623 Caps.

* * * * *

(c) * * *

(4) The Administrator may implement such additional filing periods as it deems necessary. Applications filed by health care providers within any such additional filing period shall be treated as if they were simultaneously received.

* * * * *

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

37. The authority citation continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 10,11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

38. Amend § 63.61 by revising the first paragraph to read as follows:

§ 63.61 Applicability.

Any carrier subject to the provisions of section 214 of the Communications Act of 1934, as amended, except any non-dominant carrier as this term is defined in § 61.3(y) of this chapter, proposing to discontinue, reduce, or impair interstate or foreign telephone or telegraph service to a community, or a part of a community, shall request authority therefore by formal application or informal request as specified in the pertinent sections of this part: Provided, however, That where service is expanded on an experimental basis for a temporary period of not more than 6 months, no application shall be required to reduce service to its status prior to such expansion but a written notice shall be

filed with the Commission within 10 days of the reduction showing (a) date on which, places at which, and extent to which service was expanded and (b) date on which, places at which, and extent to which such expansion of service was discontinued: And provided further, That a licensee of a radio station who has filed an application for authority to discontinue service provided by such station shall during the period that such application is pending before the Commission, continue to file appropriate applications as may be necessary for extension or renewal of station license in order to provide legal authorization for such station to continue in operation pending final action on the application for discontinuance of service. Procedures for discontinuance, reduction or impairment of service by dominant and non-dominant, domestic carriers are in § 63.71 of this chapter. Procedures for discontinuance, reduction or impairment of international services are in § 63.19 of this chapter.

* * * * *

39. Amend § 63.71 by revising paragraphs (a)(5)(i) and (a)(5)(ii) and by adding paragraph (d) to read as follows:

§ 63.71 Procedures for discontinuance, reduction or impairment of service by domestic carriers

* * * * *

(a) * * *

(5) * * *

(i) If the carrier is non-dominant with respect to the service being discontinued, reduced or impaired, the notice shall state: The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 15 days after the Commission releases public notice of the proposed discontinuance. Address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20054, and include in your comments a reference to the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service.

(ii) If the carrier is dominant with respect to the service being discontinued, reduced or impaired, the notice shall state: The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 30 days after the Commission releases public notice of the proposed discontinuance. Address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20054, and include in your comments a reference to the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service.

* * * * *

(d) Procedures for discontinuance, reduction or impairment of international services are in § 63.19 of this chapter.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

40. The authority citation continues to read as follows:

Authority: 47 U.S.C. 154, 254(k) and 403(b)(2)(B), (c), Pub. L. 104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

41. Amend § 64.1903 by revising paragraph (a) introductory text and by removing paragraph (c) to read as follows:

§ 64.1903 Obligations of all incumbent independent local exchange carriers.

(a) An incumbent independent LEC providing in-region, interstate, interexchange services or in-region international interexchange services shall provide such services through an affiliate that satisfies the following requirements:

* * * * *

PART 69—ACCESS CHARGES

42. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

§ 69.116 [Removed]

43. Remove § 69.116.

§ 69.117 [Removed]

44. Remove § 69.117.

§ 69.126 [Removed]

45. Remove § 69.126.

§ 69.127 [Removed]

46. Remove § 69.127.

§ 69.612 [Removed]

47. Remove § 69.612.

[FR Doc. 04–5657 Filed 3–17–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.040311088–4088–01; I.D. 030104A]

RIN 0648–AQ81

Fisheries of the Northeastern United States; Proposed 2004 Specifications for the Spiny Dogfish Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the spiny dogfish fishery for the 2004 fishing year, which is May 1, 2004, through April 30, 2005. The implementing regulations for the Spiny Dogfish Fishery Management Plan (FMP) require NMFS to publish specifications for the upcoming fishing year and to provide an opportunity for public comment. The intent of this rulemaking is to specify the commercial quota and other management measures, such as possession limits, to rebuild the spiny dogfish resource.

DATES: Public comments must be received (see **ADDRESSES**) no later than 5 p.m. eastern standard time on April 2, 2004.

ADDRESSES: Written comments on the proposed specifications should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. Mark on the outside of the envelope, ''Comments--2004 Spiny Dogfish Specifications.'' Comments may also be sent via facsimile (fax) to (978) 281–9135. Comments on the specifications may be submitted by e-mail. The mailbox address for providing e-mail comments is *DOGAQ81@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier:

''Comments–2004 Dogfish specifications.''

Copies of supporting documents used by the Joint Spiny Dogfish Committee and the Spiny Dogfish Monitoring Committee; the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA); and the Essential Fish Habitat Assessment (EFHA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South Street, Dover, DE 19904. The EA, RIR, IRFA and EFHA are accessible via the Internet at *http://www.nero.nmfs.gov./ro/doc/nero.html*.

FOR FURTHER INFORMATION CONTACT: Eric Jay Dolin, Fishery Policy Analyst, (978)281–9259, fax (978)281–9135, e-mail *eric.dolin@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Spiny dogfish were declared overfished by NMFS on April 3, 1998, and added to that year's list of overfished stocks in the *Report on the Status of the Fisheries of the United States,* prepared pursuant to section 304 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Consequently, the Magnuson-Stevens Act required the preparation of measures to end overfishing and to rebuild the spiny dogfish stock. A joint FMP was developed by the Mid-Atlantic and New England Fishery Management Councils (Councils) during 1998 and 1999. The Mid-Atlantic Fishery Management Council (MAFMC) was designated as the administrative lead on the FMP.

The regulations implementing the FMP at 50 CFR part 648, subpart L, outline the process for specifying annually the commercial quota and other management measures (e.g., minimum or maximum fish sizes, seasons, mesh size restrictions, possession limits, and other gear restrictions) for the spiny dogfish fishery to achieve the annual target F specified in the FMP. The target F for the 2004 fishing year is not to exceed 0.08.

The Spiny Dogfish Monitoring Committee (Monitoring Committee), comprised of representatives from states, MAFMC staff, New England Fishery Management Council (NEFMC) staff, NMFS staff and two non-voting, ex-officio industry representatives (one each from the MAFMC and NEFMC regions) is required to review annually the best available information and to recommend a commercial quota and other management measures necessary to achieve the target F for the upcoming fishing year. The Council's Joint Spiny Dogfish Committee (Joint Committee) then considers the Monitoring Committee's recommendations and any public comment in making its recommendation to the two Councils. Afterwards, the MAFMC and the NEFMC make their recommendations to NMFS. NMFS reviews those recommendations to assure they are consistent with the target F level, and publishes proposed measures for public comment.

Spiny Dogfish Monitoring Committee Recommendations

The Spiny Dogfish Monitoring Committee (Monitoring Committee) met in Baltimore on September 10, 2003, to review the stock assessment results and develop quota and possession limit recommendations for the 2004 fishing year. The Monitoring Committee reviewed the recent stock assessment for spiny dogfish (37th Northeast Regional Stock Assessment Review Committee (SARC) -- September 2003), which concluded that the spiny dogfish stock is overfished and overfishing is not occurring. Estimated fishing mortality in 2002 was F = 0.09 and is near the threshold (F = 0.11) at which overfishing is deemed to occur. The female spawning portion of the biomass has declined by about 75 percent since 1988 and is at 29 percent of the biomass target. Estimates of the exploitable and total biomass in 2002 are about 140,000 mt and 371,000 mt, respectively, about half of the peak level observed in 1985. Recent reductions in female spawning stock biomass cannot be replaced quickly due to the reproductive biology of spiny dogfish, and the current low level of female spawning stock biomass is expected to result in low recruitment for the next several years. Recruitment estimates from 1997 to 2003 represent the seven lowest values in the entire series. Given low current female spawning biomass, poor recruitment and reduced pup survivorship, the SARC recommended that total removals (landings, discards, Canadian catch) should be lower than those derived from the estimated rebuilding F (0.03), and also urged that the targeting females should be avoided.

The Monitoring Committee discussed potential management measures and adopted the MAFMC staff recommendation to maintain the status quo in 2004. This would mean an annual incidental catch of 4 million lb (1.81 million kg) which would be divided into two semi-annual quota periods (quota period 1 = 2.316 million lb (1.05 million kg) and quota period 2 = 1.684 million lb (763,849 kg)), and possession limits of 600 lb (272 kg) for quota period 1 and 300 lb (136 kg) for quota period 2 (vessels are prohibited from landing more than the specified amount in any one calendar day).

Joint Spiny Dogfish Committee Recommendations

On October 7, 2003, the Joint Spiny Dogfish Committee (Joint Committee) voted to set the 2004 quota at 8 million lb (3.62 million kg). It also voted to have no possession limit in the Exclusive Economic Zone (EEZ), deferring to the states to establish possession limits.

Alternatives Proposed by the Councils

Following the Joint Committee meeting, on October 7, 2003, the MAFMC reviewed the Monitoring Committee and Joint Committee recommendations, and adopted recommended specifications for the 2004 fishing year. Those specifications would set an annual quota of 4 million lb (1.81 million kg), to be divided into two semi-annual quota periods for the 2004 fishing year. The quota for period 1 would be 2.316 million lb (1.05 million kg) and for period 2 would be 1.684 million lb (763,849 kg). The MAFMC recommended that the possession limits for both quota periods not exceed 1,500 lb (680 kg). On October 21, 2003, the NEFMC reviewed the Monitoring Committee and Joint Committee recommendations, and voted to adopt a 4.4 million-lb (2 million-kg) quota for the 2004 fishing year,with a 1,500–lb (680–kg) possession limit for incidental catch.

Alternative Adopted by the Atlantic States Marine Fisheries Commission

On December 17, 2003, the Atlantic States Marine Fisheries Commission's (ASMFC) Spiny Dogfish and Coastal Shark Management Board approved specifications for the 2004–2005 fishing year, setting a 4–million-lb (1.81–million kg) annual quota, with possession limits of 600 lb (272 kg) in quota period 1 and 300 lb (136 kg) in quota period 2. The ASMFC's specifications apply to state waters only.

Proposed 2004 Measures

NMFS reviewed both Councils' recommendations and concluded that maintaining the status quo, which is the same as the Monitoring Committee's recommendation, would better assure that the target F is not exceeded. NMFS proposes a commercial spiny dogfish quota of 4 million lb (1.81 million kg) for the 2004 fishing year to be divided into two semi-annual periods as follows:

2,316,000 lb (1.05 million kg) for quota period 1 (May 1, 2004 - Oct. 31, 2004); and 1,684,000 lb (765,454 kg) for quota period 2 (Nov. 1, 2004 - April 30, 2005). In addition, NMFS proposes to maintain possession limits of 600 lb (272 kg) for quota period 1, and 300 lb (136 kg) for quota period 2, to discourage a directed fishery. The directed fishery has traditionally targeted large mature female spiny dogfish, the stock component that is most in need of protection and rebuilding. Maintaining the limits of 600 lb (272 kg) and 300 lb (136 kg) for quota periods 1 and 2, respectively, would allow for the retention of spiny dogfish caught incidentally while fishing for other species, but discourage directed fishing and, therefore, provide protection for mature female spiny dogfish.

Maintaining the status quo would also be consistent with the measures being implemented under the ASMFC's Interstate Fishery Management Plan in state waters. This would have the benefit of establishing consistent management measures in Federal and state jurisdictions for the first time since the FMP was enacted.

Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

An IRFA was prepared that describes the impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the SUMMARY section of the preamble. A summary of the analysis follows.

The small entities considered in the analysis include 255 vessels that have reported spiny dogfish landings to NMFS in 2002 (the most recent year for which there are vessel-specific data). In addition, there are vessels that are not subject to the Federal reporting requirements because they fish exclusively in state waters. Furthermore, there are a large number of vessels that have been issued Federal spiny dogfish permits, but have not fished for spiny dogfish (a total of 2,915 vessels were issued the permit in 2002). It is presumed that these vessels are interested in the fishery but have chosen not to participate under the restrictive possession limits. If any of these vessels should choose to participate in the upcoming fishing year, they might experience revenue increases associated with landings of spiny dogfish, but those increases cannot be estimated.

The IRFA considered four alternatives. The action recommended in this proposed rule includes a commercial quota of 4 million lb (1.81 million kg), and possession limits of 600 lb (272 kg) during quota period 1 and 300 lb (136 kg) during quota period 2. Alternative 2 evaluates the MAFMC proposal of an annual bycatch quota of 4 million lb (1.81 million kg), to be divided into two semi-annual quota periods for the 2004 fishing year. The quota for period 1 would be 2.316 million lb (1.05 million kg) and for period 2 would be 1.684 million lb (763,849 kg). The possession limits for both quota periods would not exceed 1,500 lb (680 kg). Alternative 3 evaluates the NEFMC proposal of an annual 4.4 million-lb (2 million-kg) quota for the 2004 fishing year, with a 1,500–lb (680–kg) possession limit for both periods. Alternative 4 evaluates the impact of having no management measures (no action).

The potential changes in 2004 revenues under the 4–million lb (1.81–million kg) quota were evaluated relative to landings and revenues derived during 2002: 4.76 million lb (2.2 million kg) of landings, valued at $970,000. The analysis is based on the last full fishing year of landings data and assumed that the revenues of the 255 vessels that landed spiny dogfish in 2002 would be reduced proportionately by the proposed action. The reduction in overall gross revenues to the fishery as a whole was estimated to be about $155,200, or about $609 per vessel, compared to fishing year 2002.

The proposed possession limits of 600 lb (272 kg) in quota period 1, and 300 lb (136 kg) in quota period 2 represent a continuation of the possession limits established for fishing year 2002 and would have no new impact.

Under Alternative 2, the gross revenue impacts would be similar to impacts anticipated for Alternative 1 since the recommended quotas are identical. The possession limit, however, would increase to 1,500 lb (680 kg). The magnitude of increases in gross revenue associated with the larger possession limit is not known. Recent possession limit analyses conducted by the Northeast Fisheries Science Center suggested that trip-level profitability associated with landing spiny dogfish was marginal when 1,500 or fewer pounds of spiny dogfish were retained. As such, an increase from status quo possession limits upward to 1,500 lb (680 kg) may not be expected to increase direct fishing for dogfish or provide significant increases in associated economic benefits.

Under Alternative 3, the quota would be 4.4 million lb (2.2 million-kg). This represents a 7.5 percent decrease in landings relative to the landings in 2002. The reduction in overall gross revenues to the fishery as a whole under this alternative was estimated to be about $72,750, or about $285 per vessel, compared to fishing year 2002.

Under Alternative 4, which would implement no management measures, landings are projected to be 25 million lb (11.36 million kg) in 2003–2004. This would constitute a 525 percent increase in fishing opportunity compared to the status quo (4.0 million pounds (1.81 million kg)) and a 425 percent increase in fishing opportunity compared to actual FY2002 landings (4.76 million lb (2.2 million kg)). Although the short-term social and economic benefits of an unregulated fishery would be much greater than those associated with Alternatives 1 through 3, fishing mortality is expected to rise above the threshold level that allows the stock to replace itself (F_{REP} = 0.11) such that stock rebuilding could not occur. In the long term, unregulated harvest would lead to depletion of the spiny dogfish population which would eventually eliminate the spiny dogfish fishery altogether.

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

Dated: March 12, 2004.

Rebecca Lent,

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

[FR Doc. 04–6129 Filed 3–17–04; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 69, No. 53
Thursday, March 18, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Plumas County Resource Advisory Committee (RAC) will hold meetings on March 19, in Quincy, California, April 16, July 9, and on August 6, 2004. Locations for the latter three meetings will be decided at the March meeting. Purposes of the *March 19* meeting include review and discussion related to the Sierra Nevada Framework Amendment-Record of Decision and Health Forest Initiative in addition to reports from various subcommittees including project monitoring and stewardship contracting. The purpose of the *April 16* meeting is to review concept papers from potential project applicants in the 4th cycle of funding under the Title 2 provisions of the Secure Rural Schools and Community Self-Determination Act of 2000. The purpose of the *July 9* meeting is to review final applications that result from the concept paper review process in April. Selected projects will then be recommended to the Plumas National Forest (PNF) Supervisor for funding. The purpose of the *August 6* meeting is to review PNF Supervisor decisions for funding Cycle 4 projects that were recommended by the RAC.

DATES AND ADDRESSES: The *March 19* meeting will take place from 9–2 p.m., in the Mineral Building at the Plumas-Sierra County Fairgrounds, 204 Fairgrounds Road, Quincy, California. Locations and times for the April 16, July 9, and August 6, 2004 meetings will be decided at the March 19 meeting.

FOR FURTHER INFORMATION CONTACT: Lee Anne Schramel Taylor, Forest Coordinator, USDA, Plumas National Forest, P.O. Box 11500/159 Lawrence Street, Quincy, CA 95971; (530) 283–7850; or by e-mail *eataylor@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items for the *March 19* meeting include: (1) Updates on the Sierra Nevada Plan Amendment ROD and the Healthy Forest Initiative; (2) Sub-committee reports including monitoring and stewardship contracting; (3) Misc. activities and updates on funded projects, and, (4) Future meeting schedule/logistics/agenda. Agenda items, in addition to those noted in the summary, will be developed at a later date. The meetings are open to the public and individuals may address the Committee after being recognized by the Chair. Other RAC information including previous meeting agendas and minutes may be obtained at *http://www.fs.fed.us/r5/pay2states.*

Dated: March 12, 2004.

Robert G. MacWhorter,

Deputy Forest Supervisor.

[FR Doc. 04–6115 Filed 3–17–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on May 6, 2004, in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on May 6, 2004, from 6 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Crescent Fire Protection District, 255 West Washington Boulevard, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. E-mail: *lchapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting will include a presentation on the Siskiyou Bioregion. 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 12, 2004.

William D. Metz,

Acting Forest Supervisor.

[FR Doc. 04–6116 Filed 3–17–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Modoc County RAC Meetings

AGENCY: Forest Service, USDA.

ACTION: Notice of Modoc County RAC meetings.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Modoc National Forest's Modoc County Resource Advisory Committee will meet Monday April 5, 2004, from 6 to 8 p.m. in Alturas, California. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: Agenda topics for the meeting include approval of the March 1, 2003, minutes. The meeting will be held at Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas, California on Monday, April 5, 2004, from 6 to 8 p.m. Time will be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Forest Supervisor Stan Sylva, at (530) 233–8700; or Public Affairs Officer Nancy Gardner at (530) 233–8713.

Nancy Gardner,

Acting Forest Supervisor.

[FR Doc. 04–6117 Filed 3–17–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Multiple Family Housing.

DATES: Comments on this notice must be received by May 17, 2004, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Janet Stouder, Deputy Director, Multi-Family Housing Portfolio Management Division, Rural Housing Service, STOP 0782, Room 1245, 1400 Independence Avenue, SW., Washington, DC 20250–0782.

SUPPLEMENTARY INFORMATION: *Title:* Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Multiple Family Housing.

OMB Number: 0575–0104.

Expiration Date of Approval: September 30, 2004.

Type of Request: Extension of currently approved information collection.

Abstract: The regulation promulgates the policies and procedures for actions to be taken in cases where unauthorized financial assistance in the form of a loan, grant, interest subsidy benefit created through use of an incorrect interest rate, interest credits, or rental assistance has been extended to a Multiple Family Housing borrower or grantee by the Rural Housing Service (RHS).

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.14 hours per response.

Respondents: Individuals, State or local governments, and small businesses or organizations.

Estimated Number of Respondents: 700.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 700.

Estimated Total Annual Burden on Respondents: 800 hours.

Copies of this information collection can be obtained from Tracy Givelekian, Regulations and Paperwork Management Branch, at (202) 692–0039.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Givelekian, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 9, 2004.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 04–6133 Filed 3–17–04; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maine Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a community forum of the Maine Advisory Committee will convene at 2:30 p.m. and adjourn at 6:30 p.m., on Tuesday, April 6, 2004, in the Luther Bonney Auditorium on the main floor of the Luther Bonney Hall, University of Southern Maine, 96 Falmouth Street, Portland, Maine. The purpose of the community forum is to address post-9/11 civil rights issues in Maine related to racial and ethnic profiling and harassment.

Persons desiring additional information should contact Aonghas St-Hilaire of the Eastern Regional Office, 202–376–7533 (TTY 202–376–8116). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Office at least 10 (ten) working days before the scheduled date of the community forum.

The community forum will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, March 12, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–6134 Filed 3–17–04; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maine Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Maine Advisory Committee will convene at 11 a.m. and adjourn at 12 p.m., Monday, March 29, 2004. The purpose of the conference call is to resolve final tactical planning issues related to a community forum on post-9/11 civil rights in Maine.

This conference call is available to the public through the following call-in number: 1–800–473–8694, access code: 22610334. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code number.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Aonghas St-Hilaire of the Eastern Regional Office, 202–376–7533 (TTY 202–376–8116), by 4 p.m. on Friday, March 26, 2004.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 15, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–6135 Filed 3–17–04; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Iowa, Kansas, Missouri, Nebraska, and Oklahoma State Advisory Committees

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Iowa, Kansas, Missouri, Nebraska, and Oklahoma Advisory Committees will convene at 1:30 p.m. (c.s.t.) and adjourn at 3 p.m. on Thursday, April 1, 2004. The purpose of the conference call is to discuss the final plans for the ''Midwest Civil Rights Listening Tour'' to be held in May 2004.

This conference call is available to the public through the following call-in number: 1–800–473–6927, access code number 22484125. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or made over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code number.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Jo Ann Daniels of the Central Regional Office at 913–551–1400 and TTY 913–551–1414, by 2 p.m. (c.s.t.) on Friday, March 26, 2004.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 10, 2004.

Ivy L. Davis,

Chief, Regional Program Coordination Unit.

[FR Doc. 04–6136 Filed 3–17–04; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–501]

Notice of Extension of Time Limit for the Preliminary Results of New Shipper Reviews: Natural Bristle Paintbrushes and Brush Heads From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the new shipper reviews on Shanghai R&R Imp./Exp. Co., Ltd. and Changshan Import/Export Co., Ltd. under the antidumping duty order on natural bristle paintbrushes and brush heads from the People's Republic of China until no later than July 26, 2004. The period of review for these new shipper reviews is February 1, 2003, through July 31, 2003. This extension is made pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: March 18, 2004.

FOR FURTHER INFORMATION CONTACT: Douglas Kirby or Scott Lindsay, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–3782 or (202) 482–1386, respectively.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 351.214(i)(1) of the regulations requires the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated, and the final results of review within 90 days after the date on which the preliminary results were issued. However, if the Department determines the issues are extraordinarily complicated, section 351.214(i)(2) of the regulations allows the Department to extend the deadline for the preliminary results to up to 300 days after the date on which the new shipper review was initiated.

Background

On August 14, 2003, the Department received timely requests from Shanghai R&R Imp./Exp. Co., Ltd. and Changshan Import/Export Co., Ltd., pursuant to section 751(a)(2)(B) of the Tariff Act of 1930 (the Act) and in accordance with 19 CFR 351.214(c), for new shipper reviews under the antidumping duty order on natural bristle paintbrushes and brush heads from the PRC. This order has a February anniversary month, and, therefore, an August semiannual anniversary month. On September 30, 2003, the Department initiated these two new shipper reviews. *See Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews,* 68 FR 57875 (October 7, 2003).

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(2)(B) of the Act, the Department may extend the deadline for completion of the preliminary results of a new shipper review if it determines that the case is extraordinarily complicated. The Department has determined that these cases are extraordinarily complicated, and the preliminary results of these new shipper reviews cannot be completed within the statutory time limit of 180 days. The Department finds that these new shipper reviews are extraordinarily complicated because there are a number of issues that must be addressed. For example, the Department is in the process of issuing supplemental questionnaires requesting additional information concerning affiliation and the *bona fides* of the sales. Given the issues in this case, the Department may find it necessary to request even more information in these new shipper reviews. Therefore, in accordance with section 351.214(i)(2) of the regulations, the Department is extending the time limit for the completion of preliminary results to three hundred days. The preliminary results will now be due no later than July 26, 2004.

This notice is published pursuant to sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: March 11, 2004.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 04–6144 Filed 3–17–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, Application No. 97–7A003.

SUMMARY: The U.S. Department of Commerce has issued an amendment to the Export Trade Certificate of Review

granted to the Association for the Administration of Rice Quotas, Inc. (''AARQ'') on March 3, 2004. Notice of issuance of the original Certificate was published in the **Federal Register** on January 28, 1998 (63 FR 4220).

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number), or by e-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2004).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the certification in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the grounds that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 97–00003, was issued to AARQ on January 21, 1998 (63 FR 4220, January 28, 1998) and last amended November 19, 2002 (68 FR 8739, February 25, 2003).

AARQ's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of § 325.2(l) of the Regulations (15 CFR 325.2(l)): Itochu International Inc., New York, New York (a subsidiary of Itochu Corporation, Tokyo, Japan); and Veetee Rice Inc., Springfield, Virginia (a subsidiary of Veetee Investments, Nassau, Bahamas).

2. Change the listing of the following Members: ''California Commodity Traders, LLC, Robbins, California, and its affiliate American Commodity Company, LLC, Robbins, California'' to read ''American Commodity Company, LLC, Robbins, California''; ''Cargill Americas, Inc., Wayzata, Minnesota'' to read ''Cargill Americas, Inc., Coral Gables, Florida''; ''ConAgra Foods, Inc., Omaha, Nebraska, and its subsidiary, Alliance Grain, Inc., Voorhees, New Jersey'' to read ''ConAgra Foods, Inc., Omaha, Nebraska, and its subsidiary, Alliance Grain, Inc., Marlton, New Jersey''; ''Gulf Pacific, Inc., and its subsidiaries, Gulf Pacific Rice Co., Inc., and Gulf Rice Milling, Inc., Houston, Texas'' to read ''Gulf Pacific Rice Co., Inc., Gulf Rice Milling, Inc., Houston, Texas, and Harvest Rice, Inc., McGehee, Arkansas (each a subsidiary of Gulf Pacific, Inc., Houston, Texas)''; ''Rickmers Rice USA, Inc., St. Louis, Missouri'' to read ''Rickmers Rice USA, Inc., Knoxville, Tennessee''; ''Sunshine Rice, Inc., Stockton, California (a subsidiary of Sunshine Business Enterprise, Inc.)'' to read ''KD International Trading, Inc., Stockton, California (a subsidiary of Sunshine Business Enterprises, Inc.)''; and ''Uncle Ben's Inc., Greenville, Mississippi'' to read ''Masterfoods USA a Mars, Incorporated Company, Greenville, Mississippi.''

The effective date of the amended certificate is December 4, 2003. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: March 11, 2004.

Jeffrey A. Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 04–6072 Filed 3–17–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.031204E]

Small Takes of Marine Mammals Incidental to Specified Activities; Oceanographic Surveys in the Southern Gulf of California

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

ACTION: Notice of receipt of application and proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from Scripps Institution of Oceanography (Scripps), a part of the University of California, for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting oceanographic surveys in the southern Gulf of California. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue a one-year incidental harassment authorization (IHA) to Scripps.

DATES: Comments and information must be received no later than April 19, 2004.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. The mailbox address for providing e-mail comments is *PR2.Scripps@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: I.D. 031204E. A copy of the application containing a list of the references used in this document may be obtained by writing to this address, by telephoning the contact listed here or at: *http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications*

Comments cannot be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Kimberly Skrupky, Office of Protected Resources, NMFS, (301) 713–2322, ext 163.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under section 3(18)(A), the MMPA defines ''harassment'' as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

The term ''Level A harassment'' means harassment described in subparagraph (A)(i). The term ''Level B harassment'' means harassment described in subparagraph (A)(ii).

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On December 8, 2003, NMFS received an application from Scripps for the taking, by harassment, of several species of marine mammals incidental to conducting a seismic survey program. As presently scheduled, a seismic survey will be conducted in the southern Gulf of California. The Gulf of California research cruise will be in an area extending between 22o to 26.5o N and 106o to 111o W from approximately April 22, 2004 to May 17, 2004. The operations will partly take place in the Exclusive Economic Zone (EEZ) of Mexico.

The purpose of the seismic survey is to improve the understanding of the tectonic history of the Gulf of California, and especially of how the transition from continental rifting to seafloor spreading occurred. This includes understanding the relationship between seafloor structures in the deep water of the Gulf and structures that have been mapped on land (mostly in Baja California Sur) and in shallow coastal waters. The data will be used to test alternative tectonic models of how continental rifting and shearing during the initial separation of the Baja California peninsula from the rest of Mexico determined the present pattern of seismically-active faults and volcanically-active spreading centers. The southern part of the Gulf was selected for this work because it is adjacent to the field areas previously studied and because the seafloor sediments is generally thinner than further north, allowing better resolution of seabed structure.

Description of the Activity

The seismic survey will involve one vessel, the *R/V Roger Revelle* (under a cooperative agreement with the U.S. Navy, owner of the vessel). The *Roger Revelle* will deploy two airguns as an energy source, plus a single (450 m or 1,476.4 ft) towed streamer of hydrophones to receive the returning acoustic signals, that can be retrieved. The survey will take place in water depths greater than 400 m (1320 ft).

The procedures to be used for the seismic study will be similar to those used during previous seismic surveys by Scripps in the eastern tropical Pacific Ocean (68 FR 60916, October 24, 2003). The proposed seismic surveys will use conventional seismic methodology, with a pair of low-energy Generator-Injector (GI) airguns as the energy source and a towed hydrophone streamer as the receiver system. The energy to the airgun array is compressed air supplied by compressors on board the source vessel. In addition to the operation of the airgun array, a multi-beam sonar, 3.5 kHz sub-bottom profiler and passive geophysical sensors (gravimeter and magnetometer) will be operated during the seismic profiling, and continuously throughout the seismic survey cruise.

During the airgun operations, the vessel will travel at 11.1 km/hr (6 knots) and seismic pulses will be emitted at intervals of 6 to 10 sec. The 6 to 10–sec spacing corresponds to a shot interval of about 18.5 to 31 m (161 to 102 ft). The GI gun that will be responsible for introducing the sound pulse into the ocean is 45 in3. A larger (105 in3) injector chamber injects air into the previously-generated GI airgun bubble to maintain its shape, and does not introduce more sound into the water. The two guns will be towed 8 m (26.2 ft) apart side by side, 21 m (68.9 ft) behind the *Roger Revelle*, at a depth of 2 m (6.6 ft).

In addition to the operations of the airgun array, the ocean floor will be mapped continuously throughout the entire cruise with a Kongsberg-Simrad EM–120 multibeam sonar, and a 3.5–kHz sub-bottom profiler. Both of these sound sources will be operated simultaneously with the airgun array.

The Kongsberg-Simrad is mounted on the hull of the *Roger Revelle*. It images the seafloor over a 120 to 140 degree-wide swath, using short (15 sec) transmit pulses with a 10 to 20 sec repetition rate and an 11.25 to 12.60 kHz frequency sweep.

The sub-bottom profiler is normally operated to provide information about the sedimentary features and the bottom topography that is simultaneously being mapped by the multibeam sonar. The energy from the sub-bottom profiler is directed downward by a 3.5 kHz transducer mounted in the hull of the *Roger Revelle*. The output varies with water depth from 50 watts in shallow water to 800 watts in deep water. Pulse interval is 1 second (s) but a common mode of operation is to broadcast five pulses at 1–s intervals followed by a 5–s pause. The beam width is approximately 30o and is directed downward. Maximum source output is 204 dB re 1 µPa, 800 watts, while nominal source output is 200 dB re 1 µPa, 500 watts. Pulse duration will be 4, 2, or 1 ms, and the bandwidth of pulses will be 1.0 kHz, 0.5 kHz, or 0.25 kHz, respectively.

Additional information on the airgun arrays, bathymetric sonars, and sub-bottom profiler specifications is also contained in the application (see **ADDRESSES**).

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Gulf of California near the and its associated marine mammals can be found in the Scripps application and a number of documents referenced in the Scripps application, and is not repeated here. In the Gulf of California, 33 marine mammal species are known to occur within the proposed study area. The cetacean species are the sperm whale (*Physeter macrocephalus*), pygmy sperm whale (*Kogia breviceps*), dwarf sperm whale (*Kogia sima*), Baird's beaked whale (B*erardius bairdii*), Cuvier's beaked whale (*Ziphius cavirostris*), Pygmy beaked whale (*Mesoplodon peruvianus*), Perrin's beaked whale (*Mesoplodon perrini*), Ginkgo-toothed beaked whale (*Mesoplodon ginkgodens*), rough-toothed dolphin (*Steno bredanensis*), bottlenose dolphin (*Tursiops truncatus*), pantropical spotted dolphin (*Stenella attenuata*), spinner dolphin (*Stenella longirostris*), striped dolphin (*Stenella coeruleoalba*), short-beaked common dolphin (*Delphinus delphis*), long-beaked common dolphin (*Delphinus capensis*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), Risso's dolphin (*Grampus griseus*), melon-headed whale (*Peponocephala electra*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), killer whale (*Orcinus orca*), short-finned pilot whale (*Globicephala*

macrorhynchus), North Pacific right whale (*Eubalaena japonica*), gray whale (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), Bryde's whale (*Balaenoptera edeni*), sei whale (*Balaenoptera borealis*), fin whale (*Balaenoptera physalus*), and blue whale (*Balaenoptera musculus*). Seven of these species are listed as endangered under the U.S. Endangered Species Act (ESA): sperm, North Atlantic right, humpback, sei, fin, and blue whales. Also, three species of pinnipeds, the California sea lion (*Zalophus californianus*), Guadalupe fur seal (*Arctocephalus townsendi*), and northern elephant seal (*Mirounga angustirostris*) could potentially be encountered during the proposed seismic surveys. One of these species, the Guadalupe fur seal, is listed as endangered under the ESA. Additional information on most of these species is available at: *http:// www.nmfs.noaa.gov/ prot_res/ PR2/ Stock_Assessment_Program/ sars.html*

Potential Effects on Marine Mammals

NMFS' August 26, 2003, **Federal Register** notice for a Scripps survey (68 FR 51240) describes the anticipated effects of the *Roger Revelle*'s airguns, multibeam sonar, and the sub-bottom profiler on marine mammals, including masking, behavioral disturbance, and potential hearing impairment and other physical effects. The Scripps application for the subject IHA for operations in the Gulf of California also provides information on what is known about the effects of Scripps's planned seismic survey on marine mammals.

Estimates of Take for the Southern Gulf of California Cruise

NMFS' current criteria for onset of Level A harassment of cetaceans and pinnipeds from impulse sound are, respectively, 180 and 190 re 1 μPa root-mean-squared (rms). The rms pressure is an average over the pulse duration. The rms level of a seismic pulse is typically about 10 dB less than its peak level (Greene 1997; McCauley *et al.* 1998, 2000a). The criterion for Level B harassment onset is 160 dB.

Given the proposed mitigation (see Mitigation later in this document), all anticipated takes involve a temporary change in behavior that may constitute Level B harassment. The proposed mitigation measures will minimize the possibility of Level A harassment. Scripps has calculated the ''best estimates'' for the numbers of animals that could be taken by level B harassment during the proposed seismic survey in the Gulf of California using data on marine mammal abundance from a previous survey region. The predicted RMS zone of influence radii are 510 m (1673 ft), 54 m (177 ft), and 17 m (56 ft), for 160, 180, and 190 dB, respectively.

These estimates are based on a consideration of the number of marine mammals that might be exposed to sound levels greater than or equal to 160 dB, the criterion for the onset of Level B harassment, by operations with the two GI gun array planned to be used for this project. The anticipated radius of influence of the multibeam sonar is less than that for the airgun array, so it is assumed that any marine mammals close enough to be affected by the multibeam sonar would already be affected by the airguns. Therefore, no additional incidental takings are included for animals that might be affected by the multibeam sonar.

The following table explains the best estimate of the numbers of each species that would be exposed to seismic sounds greater than or equal to 160 dB.

Species	''Best Estimate'' of the Number of Exposures to Sound Levels ≥160 dB (≥170 dB)	Regional Population Size
Physeteridae		
Sperm whale	6	26053
Dwarf sperm whale	87	11200
Pygmy sperm whale	15	N/A
Ziphiidae		
Cuvier's beaked whale	57	20000
Baird's beaked whale	0	N/A
Pygmy beaked whale	0	N/A
Delphinidae		
Bottlenose dolphin	893 (306)	243500
Spinner dolphin	6 (2)	1651100
Spotted dolphin	1022 (351)	2059100
Pacific white-sided dolphin	0	93100
Striped dolphin	227 (78)	1918000
Common dolphin	1212 (416)	3090000
Fraser's dolphin	0	N/A
Risso's dolphin	902 (309)	175800
Melon-headed whale	0	N/A
Pygmy killer whale	0	38900
False killer whale	0	38800
Killer whale	0	8500
Short-finned pilot whale	34 (12)	160200
Mysticetes		
Humpback whale	1	1177
Minke whale	0	N/A
Bryde's whale	17	13000
Sei whale	0	N/A
Fin whale	10	1851
Blue whale	0	1400
Pinniped		
Guadalupe fur seal	2	127000
Northern elephant seal	2	13000
California sea lion	50	209000

N.A. = not available.

Conclusions—Effects on Cetaceans

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 8 km (4.3 nm) and occasionally as far as 30 km (16.2 nm) from the source vessel. In Arctic waters, some bowhead whales avoided waters within 30 km (16.2 nm) of the seismic operation. However, reactions at such long distances appear to be atypical of other species of mysticetes and, even for bowheads, may only apply during migration. The small size of the two GI airguns used in this project will restrict the exposure to strong noise to much closer distances relative to the source vessel. The predicted radii from the source vessel are 54 m (177 ft) for 180 dB and 17 m (56 ft) for 190 dB.

Odontocete reactions to seismic pulses, or at least those of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen in the vicinity of seismic vessels. There are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes will sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking account of the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of the area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of Level B harassment.

The numbers of odontocetes that may be harassed by the proposed activities are small relative to the population sizes of the affected stocks. The best estimates for common, spotted, Risso's, and bottlenose dolphins are 1212, 1022, 902, and 893, respectively, which are the

most abundant cetaceans in the proposed survey area. These best estimates represent only 0.039, 0.050, 0.513, and 0.367 percent of the regional populations for each of these species. For other odontocetes, numbers exposed to greater than 160 dB will be smaller.

In light of the type of take expected and the relatively small numbers of affected cetaceans, the action is expected to have no more than a negligible impact on the affected species or stocks of marine mammals. In addition, mitigation measures such as controlled vessel speed, course alteration, look-outs, ramp-ups, and power-downs when marine mammals are seen within defined ranges (see Mitigation) should further reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity.

Conclusions—Effects on Pinnipeds

California sea lions are the most likely pinniped species to be encountered during the proposed seismic survey in the southern Gulf of California. It is estimated that 50 sea lions may be exposed to noise levels greater than 160 dB during the proposed survey. It is unlikely that northern elephant seals or Guadalupe fur seals will be encountered. If members of either of those species are encountered, they will be extralimital individuals. A precautionary estimate of 2 northern elephant seals and 2 Guadalupe fur seals may be encountered. The proposed seismic survey would have, at most, a short-term effect on their behavior and no long-term impacts on individual pinnipeds or their populations. Responses of pinnipeds to acoustic disturbances are variable, but usually quite limited. Effects are expected to be limited to short-term and localized behavioral changes falling within the MMPA definition of Level B harassment.

In light of the type of take expected and the relatively small numbers of affected pinnipeds, the action is expected to have no more than a negligible impact on the affected species or stocks of marine mammals. In addition, mitigation measures such as controlled vessel speed, course alteration, look-outs, ramp-ups, and power-downs when marine mammals are seen within defined ranges (see Mitigation) should further reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity.

Mitigation

The following mitigation measures are proposed for the subject seismic surveys, provided that they do not compromise operational safety requirements: (1) Speed and course alteration; (2) ramp-up and shut-down procedures; (3) no start up at night; (4) avoidance of any state or national parks by at least 10 km (6.2 mi); (5) avoidance of sea lion rookeries by at least 10 km (6.2 mi); and (6) operation of airguns only in water greater than 400 m (1312 ft) deep. Mitigation also includes marine mammal monitoring in the vicinity of the arrays. These mitigation measures are further described here.

These mitigation measures will incorporate use of established safety radii which are 17 m (56 ft) and 54 m (177 ft) from the arrays where sound levels ≥190 and 180 dB re 1 μPa rms (the criteria for onset of Level A harassment for pinnipeds and cetaceans respectively) are predicted to be received. The small size of the two GI airguns to be used in this project is also an important mitigating factor. The airguns will each be 45 in3.

Speed and Course Alteration

If a marine mammal is detected outside the appropriate safety radius and, based on its position and the relative motion, is likely to enter the safety radius, the vessel's speed and/or direct course will be changed in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety radius. If the mammal appears likely to enter the safety radius, further mitigative actions will be taken, i.e., either further course alterations or shutdown of the airguns.

Shut-down Procedures

Airgun operations will be shut-down immediately when cetaceans or pinnipeds are seen within or about to enter the appropriate safety radius. If a marine mammal is detected outside of but is likely to enter the safety radius, and if the vessel's course and/or speed cannot be changed to avoid having the marine mammal enter the safety radius, the airguns will be shut-down before the mammal is within the safety radius. Likewise, if a mammal is already within the safety zone when first detected, the airguns will be shut-down immediately.

The mammal has cleared the safety radius if it is visually observed to have left the safety radius, or if it has not been seen within the zone for 15 min (small odontocetes and pinnipeds) or 30 min (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, beaked and bottlenose whales).

Ramp-up Procedure

When airgun operations with the 2–GI airguns first start or commence after a certain period without airgun operations, the number of guns firing will be increased gradually, or ''ramped up'' (also described as a ''soft start''). Guns will be added in sequence such that the source level of the array will increase in steps over a 5–min period. Throughout the ramp-up procedure, the safety zone will be maintained.

Ramp-up will not occur if the safety radius has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime. If the safety radius has not been visible for that 30 minute period (e.g., during darkness or fog), ramp-up will not commence unless at least one airgun has been firing continuously during the interruption of seismic activity.

Other Mitigation Factors

In order to keep take numbers to the lowest level practicable, the seismic survey vessel will avoid by at least 10 km (6.2 mi) the two protected areas, Loreto Bay National Park and Cabo Pulmo Marine Park, and four California sea lion rookeries that are near the seismic survey area while shooting the GI guns. The GI guns will not be fired in water depths less than 400 m (1312 ft) because noise levels may be higher due to reverberation between the seafloor and the surface. Scripps will also not start-up the GI guns at night and will only ramp-up if one gun has been maintained.

Scripps is confident that they will be able to effectively visually monitor the 180 dB safety radii at night. Taking into consideration the additional costs of prohibiting nighttime operations and the likely impact of the activity (including all mitigation and monitoring), NMFS has determined that the proposed mitigation ensures that the activity will have the least practicable impact on the affected species or stocks. NMFS believes that marine mammals will have sufficient notice of a vessel approaching with operating GI airguns (at least one hour in advance), thereby giving them an opportunity to avoid the approaching array; if ramp-up is required after an extended power-down, two marine mammal observers will be required to monitor the safety radii using night vision devices for 30 minutes before ramp-up begins and verify that no marine mammals are in or approaching the safety radii; ramp-up may not begin unless the entire safety radii are visible; and ramp-up may occur at night only if one airgun with a sound pressure level of at least 180 dB

has been maintained during interruption of seismic activity.

Marine Mammal Monitoring

Scripps must have at least four observers on board the vessel, and at least one must be an experienced marine mammal observer that NMFS approves. At least two observers will monitor marine mammals near the seismic source vessel during all daytime airgun operations and during any nighttime start-ups of the airguns. During daylight, vessel-based observers will watch for marine mammals near the seismic vessel during periods with shooting (including ramp-ups), and for 30 minutes prior to the planned start of airgun operations after an extended shut-down.

The observers will be on duty in shifts of no longer than 4 hours. Use of two simultaneous observers will increase the likelihood that marine mammals near the source vessel are detected. Scripps bridge personnel will also assist in detecting marine mammals and implementing mitigation requirements whenever possible (they will be given instruction on how to do so), especially during ongoing operations at night when the designated observers are not on duty.

The observers will watch for marine mammals from the second level on the vessel, which is approximately 10.4 m (34 ft) above the waterline which allows for a 240–degree view. From the bridge of the *Roger Revelle*, the observer's eye level will be approximately 15 m (49 ft). The observer(s) will systematically scan the area around the vessel with reticle binoculars (e.g., 7 X 50 Fujinon) and with the naked eye during the daytime. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. Big Eye binoculars will also be mounted from the bridge of the *Roger Revelle*. The observers will be used to determine when a marine mammal is in or near the safety radii so that the required mitigation measures, such as course alteration and power-down or shut-down, can be implemented. If the airguns are powered or shut down, observers will maintain watch to determine when the animal is outside the safety radius.

If the airguns are ramped-up at night, two marine mammal observers will monitor for marine mammals for 30 minutes prior to ramp-up and during the ramp-up using night vision equipment that will be available (ITT F500 Series Generation 3 binocular image intensifier or equivalent).

Reporting

Scripps will submit a report to NMFS within 90 days after the end of the cruise, which is predicted to occur on or around May 17, 2004. The report will describe the operations that were conducted and the marine mammals that were detected. The report must provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The report will summarize the dates and locations of seismic operations, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential take of marine mammals by harassment or in other ways.

ESA

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to the issuance of an IHA.

National Environmental Policy Act (NEPA)

The NSF has prepared an EA for the southern Gulf of California surveys. NMFS is reviewing this EA and will either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA.

Preliminary Conclusions

NMFS has preliminarily determined that the impact of conducting the seismic survey in the southern Gulf of California will result, at worst, in a temporary modification in behavior by certain species of marine mammals. This activity is expected to result in no more than a negligible impact on the affected species or stocks.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document. In addition, the proposed seismic program is not expected to interfere with any subsistence hunts, since operations in the whaling and sealing areas will be limited or nonexistent.

Proposed Authorization

NMFS proposes to issue an IHA to Scripps for conducting seismic surveys in the southern Gulf of California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of species or stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: March 12, 2004.

Phil Williams,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–6130 Filed 3–17–04; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031204D]

Marine Mammals; File No. 1042–1736

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Animal Training and Research, International, Moss Landing Marine Laboratories, 8272 Moss Landing Road, Moss Landing, CA 95039, (Jenifer Hurley, Ph.D., Principal Investigator), has applied in due form for a permit to obtain up to four stranded, releasable California sea lions (*Zalophus californianus*) and up to two stranded, releasable Pacific harbor seals (*Phoca vitulina*) for the purposes of public display.

DATES: Written, telefaxed, or e-mail comments must be received on or before April 19, 2004.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301–713–2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, California 90802, (562–980–4021).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1042–1736.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Amy Sloan, (301–713–2289).

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant requests authorization to obtain California sea lion and Pacific harbor seal pups post-rehabilitation, stranded in the earlier stages of maternal care with decreased chances of post-release survival due to their extended period of human care and possible imprintation on people. California sea lion pups would be primarily females. Harbor seal pups of either sex will be considered. The applicant requests this permit for the purpose of public display. The receiving facility, Animal Training and Research, International is: (1) open to the public on regularly scheduled basis with access that is not limited or restricted other than by charging for an admission fee; (2) offers an educational program based on professionally accepted standards of the Alliance for Marine Mammal Parks and Aquariums; and (3) holds an Exhibitor's License, number 93–C–0626, issued by the U.S. Department of Agriculture under the Animal Welfare Act (7 U.S.C. 2131–59).

In addition to determining whether the applicant meets the three public display criteria, NMFS must determine whether the applicant has demonstrated that the proposed activity is humane and does not represent any unnecessary risks to the health and welfare of marine mammals; that the proposed activity by itself, or in combination with other activities, will not likely have a significant adverse impact on the species or stock; and that the applicant's expertise, facilities and resources are adequate to accomplish successfully the objectives and activities stated in the application.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 12, 2004.

Amy C. Sloan,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–6131 Filed 3–17–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 040227075–4075–01; I.D. 022304B]

National Marine Fisheries Service National Gravel Extraction Guidance

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

ACTION: Notice of availability to review and comment on draft National Marine Fisheries Service Gravel Extraction Guidance.

SUMMARY: NOAA Fisheries encourages all stakeholders, users, and the public to review the draft NOAA Fisheries Gravel Extraction Guidance. All comments received will be reviewed and considered in the final drafting of the Gravel Extraction Guidance.

DATES: Public comments must be received on or before 5 p.m., local time, May 3, 2004.

ADDRESSES: Comments on this guidance document may be submitted by email to *Gravel.guidance@noaa.gov*, or faxed to 301–427–2571, or mailed to Gravel Guidance, 1315 East-West Hwy, Room 14108, Silver Spring, MD 20910.

The draft NOAA Fisheries Gravel Extraction Guidance is available at *http://www.nmfs.noaa.gov/habitat* or by sending a request to *Gravel.guidance@noaa.gov*. Please include appropriate contact information when requesting the document.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin at 301–713–4300.

SUPPLEMENTARY INFORMATION: NOAA Fisheries is responsible for protecting, managing and conserving marine, estuarine, and anadromous fish resources and their habitats. The watersheds of the United States where sand and gravel mining takes place provide essential spawning and rearing habitat for anadromous fish including salmon, shad, sturgeon, and striped bass. A national guidance document on gravel extraction will assist NOAA Fisheries staff in determining whether proposed gravel extraction operations will be conducted in a manner that is consistent with Federal law, and that eliminates or minimizes any adverse impacts to anadromous fish and their habitats.

The recommendations incorporated into the guidance document are suggestions, and are not intended to be binding in any way. This guidance does not specify the measures, if any, that would need to be implemented by parties engaged in gravel extraction activities in any given case to comply with applicable statutory requirements. In formulating its recommendations or prescriptions, NOAA Fisheries will determine the acceptable means of demonstrating compliance with statutory requirements based on information available to the agency, as appropriate under the circumstances presented. As such, the language of the guidance document should not be read to establish any binding requirements on agency staff or the regulated community. The recommendations should not be regarded as static or inflexible, and are meant to be revised as the science upon which they are based improves and areas of uncertainty are resolved. Furthermore, the recommendations are meant to be adapted for regional or local use, so a degree of flexibility in their interpretation and application is necessary.

Dated: March 11, 2004.

Rebecca Lent,

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

[FR Doc. 04–6132 Filed 3–17–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Army Policy for Use of the Army's Microsoft Enterprise License Agreement

AGENCY: Department of the Army; Chief Information Officer, G/6 (CIO/G6), DoD.

ACTION: Notice.

SUMMARY: The Army policy for use of the Microsoft (MS) Enterprise License Agreement (ELA) was signed on February 4, 2004 by Mr. Claude M. Bolton, Jr., Army Acquisition Executive and Lieutenant General Steven W. Boutelle, Army Chief Information Officer/G–6.

The policy designates the MS ELA as the single source for MS software and establishes procedures for using and acquiring MS products for new IT hardware purchases. The policy applies to the Active Army, the Army National Guard, and the U.S. Army Reserve.

Effective immediately, hardware vendors will utilize the Army inventory of MS ELA products when Army organizations purchase new desktops, laptops, and servers requiring MS software. Army organizations must ensure hardware vendors install the MS ELS software provided by the Army. Therefore, the MS ELA policy prohibits Army organizations from procuring MS software from hardware vendors or any other source of MS software. The Army Small Computer Program (ASCP) is the Army's exclusive source for all MS software purchases.

DATES: The policy is effective immediately and applies to the Active Army, the Army National Guard, and the U.S. Army Reserve.

FOR FURTHER INFORMATION CONTACT: For questions/or comment contact Ms. Amy Harding, NETCOM at commercial (703) 602–3286, DSN 332–3286, email *Amy.Harding@hqda.army.mil,* Cynthia K. Dixon, HQDA, CIO/G–6 commercial (703) 602–7374, DSN 332–7374, email *Cynthia.Dixon@us.army.mil,* and Army Small Computer Program (ASCP) Adelia Wardle, commercial (732) 427–6793, DSN 987–6793 or email *Adelia.Wardle@us.army.mil.*

SUPPLEMENTARY INFORMATION: The Army's recently implemented Microsoft Enterprise License Agreement (MS ELA) consolidates software purchases, licenses and upgrades across the Army. This is a result of an Army Chief Information Office (CIO/G–6) initiative begun in 2001 to improve management and oversight of the Army Enterprise Infostructure (AEI) environment.

In May 2003, collaboration among the CIO/G–6, the Army Small Computer Program (ASCP), the Army Contracting Agency (ACA), the Information Technology E-Commerce & Commercial Contract Center (ITEC4), and the Network Enterprise Technology Command (NETCOM) resulted in the award of an Enterprise Software Consolidation contract (Microsoft Enterprise License Agreement) to Softmart Government Services, Inc., of Downingtown, Pa. The award based on a best-value evaluation of offers from eight Department of Defense Enterprise Software Initiative (DOD ESI) vendors. The MS ELA is centrally funded for desktop and certain enterprise server software including upgrades. The award, valued at $471 million over a 6-year period, standardizes Microsoft software Army-wide, and provides the Army with substantial savings.

Cynthia K. Dixon,

Information Management Specialist, GS–13, HQDA, CIO/G–6.

[FR Doc. 04–6085 Filed 3–17–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 17, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 12, 2004.

Jeanne Van Vlandren,

Acting Leader, Regulatory Information Management Group.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Migrant Education Program (MEP) Proposed Regulations, Sections 200.83, 200.84, and 200.88.

Frequency: Biennially.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden: Responses: 43. Burden Hours: 19,925.

Abstract: Section 200.83 of the regulations for Title I, part C establish the minimum requirements an SEA must meet for development of a comprehensive needs assessment and plan for service delivery as required under section 1306(b) of the Elementary and Secondary Education Act (ESEA), as amended (Pub. L. 107–110). Section 200.84 of the regulations establish the minimum requirements the SEA must meet to implement the program evaluation required under section 1306(b) of the Elementary and Secondary Education Act (ESEA), as amended (Pub. L. 107–110). Section 200.84 of the regulations establish the minimum requirements the SEA must meet to implement the program evaluation required under section 1304(c)(2) of ESEA. Section 200.88 of the regulations clarify that, for purposes of the MEP, only ''supplemental'' State or local funds that are used for programs specifically designed to meet the unique needs of migratory children can be excluded in terms of determining compliance with the ''comparability'' and ''supplement, not supplant'' provisions of the statute.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections''

link and by clicking on link number 2481. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy_Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–6075 Filed 3–17–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 17, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 12, 2004.

Jeanne Van Vlandren,

Acting Leader, Regulatory Information Management Group.

Office of the Undersecretary

Type of Review: New.

Title: Evaluation of the Transition to Teaching Grant Program.

Frequency: One-time.

Affected Public: State, local, or Tribal Gov't, SEAs or LEAs (primary). Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 859. *Burden Hours:* 859.

Abstract: The purpose of the Transition to Teaching (TTT) Grant Program evaluation is to assess how well the 94 grantees funded in 2002 have met the goals of the program: to recruit participants from three eligible groups, to retain TTT participants in teaching for 3 years; and to facilitate full certification of participants. This request is to gather program-level data from the project directors and to conduct a survey from a sample of TTT participants in 2004.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2480. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy_Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–6076 Filed 3–17–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity; Notice of Members

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education.

What Is the Purpose of This Notice?

The purpose of this notice is to list the members of the National Advisory Committee on Institutional Quality and Integrity (National Advisory Committee) and to give the public the opportunity to nominate candidates for the positions to be vacated by those members whose terms will expire on September 30, 2004. This notice is required under section 114(c) of the Higher Education Act (HEA), as amended.

What Is the Role of the National Advisory Committee?

The National Advisory Committee is established under section 114 of the HEA, as amended, and is composed of 15 members appointed by the Secretary of Education from among individuals who are representatives of, or knowledgeable concerning, education and training beyond secondary education, including representatives of all sectors and type of institutions of higher education.

The National Advisory Committee meets at least twice a year and provides recommendations to the Secretary of Education pertaining to:

- The establishment and enforcement of criteria for recognition of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA.
- The recognition of specific accrediting agencies or associations.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.

As the Committee deems necessary or on request, the Committee also advises the Secretary about:

- The eligibility and certification process for institutions of higher education under Title IV, HEA.
- The development of standards and criteria for specific categories of vocational training institutions and

institutions of higher education for which there are no recognized accrediting agencies, associations, or State agencies in order to establish the interim eligibility of those institutions to participate in Federally funded programs.

• The relationship between (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.

• Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe.

What Are the Terms of Office for Committee Members?

The term of office of each member is 3 years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed is appointed for the remainder of the term. A member may be appointed, at the Secretary's discretion, to serve more than one term.

Who Are the Current Members of the Committee?

The current members of the National Advisory Committee are:

Members With Terms Expiring 9/30/04

• Dr. Robert C. Andringa, President, Council for Christian Colleges and Universities, Washington, DC

• Dr. Lawrence W. Burt, Director, Office of Student Financial Services, University of Texas at Austin

• Dr. Lawrence J. DeNardis, President, University of New Haven, Connecticut

• Mr. Steven W. McCullough, Executive Director, Iowa Student Loan Liquidity Corporation

• Dr. Laura Palmer Noone, President, University of Phoenix, Arizona

Members With Terms Expiring 9/30/05

• Honorable Randolph A. Beales, Former Attorney General of Virginia, and Attorney at Law, Christian & Barton, LLP, Virginia

• Dr. Karen A. Bowyer, President, Dyersburg State Community College, Tennessee

• Dr. Gerrit W. Gong, Assistant to the President, Brigham Young University, Utah

• Mr. Donald R. McAdams, President, Center for Reform of School Systems, Texas

• Dr. George A. Pruitt, President, Thomas A. Edison State College, New Jersey

Members with Terms Expiring 9/30/06

• Mr. Ronald S. Blumenthal, Vice President, Operations, Kaplan, Inc., New York, and Vice President, Accreditation, Kaplan College, Iowa

• Dr. Carol D'Amico, Chancellor, Ivy Tech State College, Central Indiana

• Dr. Thomas E. Dillon, President, Thomas Aquinas College, California

• Mr. David Johnson, III, Student, Brigham Young University and University of Utah

• Dr. Ronald F. Mason, Jr., President, Jackson State University, Mississippi

How Do I Nominate an Individual for Appointment as a Committee Member?

If you would like to nominate an individual for appointment to the Committee, send the following information to the Committee's Executive Director:

• A copy of the nominee's resume; and

• a cover letter that provides your reason(s) for nominating the individual and contact information for the nominee (name, title, business address, and business phone and fax numbers).

The information must be sent by June 15, 2004, to the following address: Bonnie LeBold, Executive Director, National Advisory Committee on Institutional Quality and Integrity, U.S. Department of Education, room 7007, MS 7592, 1990 K Street, NW, Washington, DC 20006.

How Can I Get Additional Information?

If you have any specific questions about the nomination process or general questions about the National Advisory Committee, please contact Ms. Bonnie LeBold, the Committee's Executive Director, telephone: (202) 219–7009, fax: (202) 219–7008, e-mail: *Bonnie.LeBold@ed.gov* between 9 a.m. and 5 p.m., Monday through Friday.

Authority: 20 U.S.C. 1011c.

Dated: March 12, 2004.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 04–6055 Filed 3–17–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

State Flexibility Demonstration Program and Local Flexibility Demonstration Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice inviting applications.

Purposes of the Programs: To give selected State educational agencies (SEAs) and local educational agencies (LEAs) greater flexibility in the use of Federal funds to (1) improve and be accountable for the academic achievement of all students, especially disadvantaged students; (2) improve teacher quality and subject-matter mastery, especially in mathematics, reading, and science; (3) better empower parents, educators, administrators, and schools to address effectively the needs of their children and students; and (4) narrow achievement gaps between the lowest- and highest-achieving groups of students so that no child is left behind.

Eligible Applicants: SEAs (for the State Flexibility Demonstration program (State-Flex)) and LEAs (for the Local Flexibility Demonstration program (Local-Flex)), subject to the following conditions:

(1) If an LEA has entered into a Local-Flex agreement with the Secretary, its SEA may subsequently seek State-Flex authority only if the LEA's Local-Flex agreement is incorporated as one of the proposed performance agreements in the SEA's State-Flex proposal. At this time, the Seattle School District is the only LEA that has entered into a Local-Flex agreement.

(2) If an SEA has received State-Flex authority from the Secretary, its LEAs may not apply to the Department for Local-Flex. Rather, in these States, four to ten LEAs (at least half of which must be high-poverty LEAs) enter into a local performance agreements directly with their SEA. At this time, the Florida Department of Education is the only SEA that has received State Flexibility Authority from the Secretary. Thus, LEAs in Florida may not apply for Local-Flex. However, LEAs in other States are not precluded from applying for Local-Flex at this time.

(3) SEAs in Hawaii, Puerto Rico, and the Outlying Areas (as defined in Section 9101(30) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7801(30)) are not eligible to apply for State-Flex because they do not have the minimum number of LEAs required for State-Flex authority. By statute, the District of Columbia, Hawaii, Puerto Rico, and the Outlying Areas are also not eligible to apply as LEAs for Local-Flex.

Number of State-Flex and Local-Flex Applications that the Department May Approve: The Secretary may grant State-Flex authority to up to seven SEAs. Six grants of authority remain available.

The Secretary may enter into Local-Flex agreements with up to eighty LEAs, but no more than three LEAs in a given State.

The Department is conducting the State-Flex and Local-Flex competitions simultaneously to enable both SEAs and LEAs to take advantage of these flexibility programs at the earliest possible date. Before applying for Local-Flex, an LEA should contact its SEA to determine whether the State will seek State-Flex authority. If the SEA intends to apply for State-Flex, the SEA and LEA should consider including the proposed local performance agreement as part of the State-Flex application. Similarly, an SEA should notify all of its LEAs if it intends to apply for State-Flex so that it may coordinate with those LEAs that are interested in seeking additional flexibility.

Applications Available: March 18, 2004.

Deadline for Transmittal of Applications: There is no specific application deadline. Applications will be reviewed on a rolling basis as they are received until the maximum number of State-Flex and Local-Flex proposals authorized by the statute have been approved. We anticipate that we will complete the review of an application within 60 days of its receipt by the Department.

SUPPLEMENTARY INFORMATION: Sections 6141 through 6144 of the ESEA (20 U.S.C. 7315–7315c) allow the Secretary to grant State-Flex authority, on a competitive basis, to up to seven SEAs. The Secretary will select the State-Flex States on the basis of the selection criteria in the State-Flex application package.

Under State-Flex, an SEA receives the authority to consolidate certain Federal education funds that are provided for State-level activities and State administration and use those funds for any educational purpose authorized under the ESEA in order to meet its State's definition of adequate yearly progress (AYP) and advance the education priorities of the State and its LEAs. A State-Flex State may also specify how its LEAs will use funds received under Part A of Title V (State Grants for Innovative Programs) of the ESEA. In addition, an SEA with State-Flex authority enters into local performance agreements with four to ten of its LEAs (at least half of which must be high-poverty LEAs), giving those LEAs the flexibility to consolidate certain Federal education funds for any educational purpose permitted under the ESEA in order to meet the State's definition of AYP and specific, measurable goals for improving student achievement and narrowing achievement gaps.

Sections 6151 through 6156 of the ESEA (20 U.S.C. 7321–7321e) authorize the Secretary to enter into Local-Flex agreements with up to eighty LEAs. These agreements, like the local performance agreements under State-Flex, give the LEAs the authority to consolidate certain Federal education funds and to use those funds for any purpose under the ESEA in order to assist the LEAs in meeting the State's definition of AYP and specific, measurable goals for improving student achievement and narrowing achievement gaps. The Secretary will select the remaining Local-Flex LEAs on the basis of the selection criteria in the Local-Flex application package.

Competitive Preference in Future Grant Competitions: Because State-Flex and Local-Flex participants have undergone comprehensive planning to improve teacher quality and the academic achievement of all students, especially disadvantaged students, and are held to a higher degree of accountability, the Secretary intends to give them a competitive preference in future grant competitions for Federal education funding in which SEAs and LEAs are eligible applicants, to the extent that the competitive preference would further the intent and purposes of the respective grant programs. Where appropriate, the Secretary plans to establish the competitive preferences in the individual program notices announcing future competitions.

FOR FURTHER INFORMATION CONTACT: Ms. Jill Staton, U.S. Department of Education, Office of Elementary and Secondary Education, 400 Maryland Ave., SW., Rm. 3E213, Washington, DC 20202–6400. Telephone: (202) 401–0039 or via Internet: *LocalFlex@ed.gov*; *StateFlex@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 notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed above.

Applications: You may obtain a copy of the application package on the Department's Web site at: State Flexibility Demonstration Program *http://www.ed.gov/programs/stateflex/applicant.html*; Local Flexibility Demonstration Program *http://www.ed.gov/programs/localflex/applicant.html*.

You may also obtain a copy of the application from the contact person identified under **FOR FURTHER INFORMATION CONTACT**. Instructions for submitting applications are included in the application package.

Electronic Access to this Document: You may view this document, as well as other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll-free, at 1–888–293–6498; or in the Washington DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official version of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.gpoaccess.gov/nara/index.html*.

Program Authority: 20 U.S.C. 7315–7315c for State-Flex, and 20 U.S.C. 7321–7321e for Local-Flex.

Dated: March 10, 2004.

Raymond Simon,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 04–6139 Filed 3–17–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

RIN 1865–ZA02

Safe Schools/Healthy Students

AGENCY: Office of Safe and Drug-Free Schools, Department of Education.

ACTION: Notice of proposed priority, selection criteria, requirements, and definitions.

SUMMARY: The Departments of Education (ED), Health and Human Services (HHS), and Justice (DOJ) issue this notice to propose a priority, selection criteria, requirements, and definitions for the Safe Schools/Healthy Students Initiative (SS/HS). We propose this action to focus Federal financial assistance on safe, disciplined and drug-free learning environments and healthy childhood development. We intend the priority to support the implementation and enhancement of integrated, comprehensive community-wide plans that create safe and drug-free schools and promote healthy childhood development. The Associate Deputy Under Secretary may use this priority, selection criteria, requirements and definitions for competitions in fiscal year (FY) 2004 and later years.

DATES: We must receive your comments on or before April 19, 2004.

ADDRESSES: Address all comments about this proposed priority, selection criteria, requirements, and definitions to Karen Dorsey, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E347, Washington, DC 20202–6450. If you prefer to send your comments through the Internet, use the following address: *Karen.Dorsey@ed.gov.* Please include the following in the subject line of all e-mails, ''Comments on SS/HS NPP.''

FOR FURTHER INFORMATION CONTACT: Karen Dorsey. Telephone (202) 708–4674 or via Internet: *Karen.Dorsey@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 contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding the proposed priority, selection criteria, requirements and definitions. To ensure that your comments have maximum effect in developing the notice of final priority, selection criteria, requirements, and definitions, we urge you to identify clearly the specific proposed priority, selection criterion, requirement or definition your comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirements of reducing regulatory burden that might result from the proposed priority, selection criteria, requirements and definitions. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this proposed priority in room 3E316 at 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or printer magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority, selection criteria, requirements and definitions. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

We will announce the final priority, selection criteria, requirements, and definitions in a notice in the **Federal Register**. We will determine the final priority, selection criteria, requirements, and definitions after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, other selection criteria, or other requirements, or changing definitions, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we will invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Discussion of Proposed Priority

Background

The SS/HS grant program draws on the best practices of the education, justice, social service, and mental health systems to promote enhanced resources for prevention programs and prosocial services for youth. The SS/HS grant program is based on evidence that a comprehensive, integrated community-wide approach is an effective way to promote healthy child development and address the problems of school violence and alcohol and other drug abuse. Key to the grant program is the creation and implementation of a comprehensive plan that addresses violence and alcohol and other drug abuse and promotes prosocial skills and healthy child development for youth.

A critical feature of SS/HS is the linking and integration of existing and new services and activities into a comprehensive approach to violence prevention and healthy child development that reflects an overall vision for the community, not the isolated objectives of a single activity, particularly the reliance on security devices alone. The primary objectives of a community's SS/HS plan should be to present a thoughtful, well-coordinated strategy that will unify and enhance existing programs and services and to develop a systematic approach for sustaining those activities, curricula, programs, and services that prove to be effective.

Proposed Priority

This proposed priority would support the projects of local educational agencies proposing to implement an integrated, comprehensive community-wide plan designed to create safe and drug-free schools and promote prosocial skills and healthy childhood development in youth. Plans must focus activities, curricula, programs, and services in a manner that responds to all of the following six elements:

- *Element One*—Safe school environment—**Note:** We propose that no more than 10 percent of the total budget for each year may be used to support costs associated with (1) security equipment and personnel, and (2) minor remodeling of school facilities to improve school safety;
- *Element Two*—Alcohol and other drugs and violence prevention and early intervention programs;
- *Element Three*—School and community mental health preventive and treatment intervention services;
- *Element Four*—Early childhood psychosocial and emotional development programs;
- *Element Five*—Supporting and connecting schools and communities; and
- *Element Six*—Safe school policies.

Discussion of Proposed Selection Criteria

Background

The SS/HS grant program was established in 1999 with the award of 54 grants. The SS/HS grant program was created to provide Federal financial

assistance to school districts and communities to promote ongoing partnerships as a way of enhancing and expanding their existing activities relating to youth violence prevention and healthy child development. Since the original competition in 1999 two additional competitions have been held (FY 2001 and FY 2002). Our experience with competitions, peer reviewers, applicants, and funded grantees demonstrates the need to develop selection criteria that more adequately represent the qualities of successful SS/HS grantees. For example, selection criteria used in previous competitions may have unintentionally limited the opportunity for reviewers to evaluate the existence of an applicant's partnership and its capacity to use Federal financial assistance efficiently and effectively to enhance and expand current activities.

To improve the program we held focus groups with current grantees and other professionals with a working knowledge of the SS/HS program to identify key qualities of successful SS/HS grantees and gathered related input from the Federal program staff who monitor SS/HS grants. All of these factors were used to develop the following proposed selection criteria.

Proposed Selection Criteria

We propose the following selection criteria for this program:

1. Community Assessment

(a) The extent to which specific gaps or weaknesses in services, infrastructure, opportunities, and/or resources have been identified and will be addressed by the proposed project and the nature and magnitude of those gaps and weaknesses are based on quantitative and qualitative data for the district, students, families and the community. An example of the kinds of problems that might be identified and addressed would be a high number of truant students, in relation to comparable jurisdictions, and a lack of truancy officers and programs.

(b) The extent to which existing services, infrastructure, opportunities and resources are described and integrated with the proposed project. An example citing existing services would be the number of after school programs available to students that would be improved by adding supplemental services and staff through the proposed project.

(c) The extent to which the applicant will serve the entire school district or the extent to which sufficient rationale is provided for selecting particular schools and/or areas and why a district-wide approach is not feasible or appropriate.

(d) The extent to which the target population is clearly identified and defined in terms of the number of students/families/staff to be served.

2. Goals, Objectives and Performance Indicators

(a) The extent to which the goals, objectives, and performance indicators for the project are related to data provided in the ''Community Assessment'' section.

(b) The extent to which the applicant includes at least one measurable and attainable performance indicator for each of the six elements in the priority and at least one performance indicator for the SS/HS partnership, for a total of at least seven performance indicators.

(c) The extent to which the goals, objectives, and performance indicators are reflected in proposed programs, curricula, and other activities.

(d) The extent to which the applicant includes baseline data and a source of data for the periodic measuring of progress of project-specific performance indicators and for required Government Performance and Results Act (GPRA) performance indicators.

3. Project Design

(a) The extent to which the project design builds upon community assessment data, and/or identified gaps or weaknesses in existing services, infrastructure, opportunities, and resources.

(b) The extent to which the applicant can demonstrate that programs, training, curriculum, and other activities selected for the project reflect current research and use evidence-based and effective practices and that they are responsive to the targeted population to be served, including meeting cultural and linguistic needs.

(c) The extent to which the proposed short- and long-term strategies will promote healthy child development and school environments that are safe, disciplined, and drug-free.

(d) The extent to which the proposed short- and long-term strategies allow for systematic development of infrastructure that builds organizational, community, and individual capacity to sustain outcomes beyond the life of the grant.

(e) The extent to which the project design addresses the six elements of the priority, integrating existing and new services into a comprehensive approach to violence prevention and healthy childhood development.

4. Partnership and Community Readiness

(a) The extent to which the applicant has demonstrated the existence of an active school-community partnership prior to planning and submitting its SS/HS application. Examples of how to demonstrate the existing partnership can include a description of the history of the partnership, including the circumstances around its creation and accomplishments to date.

(b) The extent to which the applicant will engage multiple and diverse sectors of the community in its strategic planning process. Examples of possible community participants include but are not limited to nonprofit community groups, faith-based organizations, private schools, teachers, youth, parents, and supervisory and line staff of social service agencies.

(c) The extent to which the applicant's memorandum of agreement for SS/HS Partners includes: A mission statement for the SS/HS partnership; a delineation of the roles and responsibilities of each partner; a process for communicating and sharing resources; and other pertinent information to evaluate the partnership's likelihood of successfully implementing the project.

(d) The extent to which the applicant's memorandum of agreement for mental health services demonstrates the willingness of the mental health authority to provide administrative oversight of mental health services. This agreement describes a process for securing mental health providers and procedures to be used for referral, treatment, and follow-up for children and adolescents with serious mental health problems. This agreement provides evidence that there will be integration, coordination, and resource sharing with mental health and social service providers by schools and other community-based programs.

5. Evaluation

(a) The extent to which the applicant describes an appropriate evaluation design—using both quantitative and qualitative methods, including: (1) What types of data will be collected; (2) when various types of data will be collected; (3) what evaluation methods will be used and why; (4) what instruments will be developed and when; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; (7) how data and other information will be used for strategic planning, measuring progress, making programmatic adjustments, and keeping the proposed strategy focused on its

overall objective of promoting healthy childhood development and preventing violence and alcohol and other drug abuse; and (8) how the applicant will use the information collected through the evaluation to support SS/HS GPRA indicators.

(b) The extent to which the individual or organization that has been selected or will be sought to serve as the local evaluator has adequate qualifications and experience to conduct the local evaluation.

(c) The extent to which the applicant allocates an appropriate and reasonable level of resources to local project evaluation. **Please note:** Consistent with funding restrictions established for the program, a minimum of 7 percent of the total budget must be designated for local evaluation activities.

6. Program Management

(a) The extent to which the roles and responsibilities of key staff, including the full-time project director, and partners are defined.

(b) The adequacy of the management plan to achieve the objectives of the proposed project on time, including clearly defined timelines with reasonable dates for implementing and accomplishing project tasks.

(c) The adequacy of procedures for communicating and sharing information among all partners, to ensure feedback and continuous improvement in the operation of the project.

7. Budget

(a) The extent to which the proposed budget and narrative correspond to the project design and provide adequate documentation and justification for how funds will be used and how costs were calculated.

(b) The extent to which the applicant demonstrates current fiscal control and accounting procedures to ensure prudent use, proper and timely disbursement, and accurate accounting of funds received under the grant.

Additional Selection Factors

We propose to consider the following two factors in selecting an application for an award: (1) Geographic distribution and diversity of activities addressed by the projects; and (2) equitable distribution of funds among urban, suburban and rural local educational agencies.

Discussion of Proposed Requirements

Background

SS/HS applicants from prior competitions have suggested that we clarify certain of the SS/HS application and other requirements. These include: Eligibility requirements; requirements that must be met for an application to be forwarded to peer review; the maximum funding that may be requested; and the limits on the amount of funds that may be used for certain grant activities. Accordingly we propose the following requirements:

Proposed Requirements

Application and Eligibility. We propose that, before we will submit an SS/HS application for peer review, the applicant must meet the following requirements:

(1) The local educational agency/applicant must not have received funds or services under the SS/HS initiative under any previous fiscal years.

(2) The applicant's request for funding must not exceed the maximum amount established for its defined urbancity. The maximum request for SS/HS funds is $3 million for urban schools for a 12-month period; $2 million for suburban schools for a 12-month period; and $1 million for rural and Bureau of Indian Affairs (BIA) schools for a 12-month period. To determine urbancity and the maximum amount they are eligible to apply for, all applicants except BIA schools must use the district locale code on the National Public School and School District Locator website and the definitions established for rural, suburban and urban to determine urbanicity. A BIA school's request must not exceed $1 million.

(3) The applicant must include in its application two memoranda of agreement demonstrating the commitment of the required SS/HS partners. Two agreements must be signed by the required partners (as described below) and dated no earlier than six months prior to the SS/HS application deadline. Applicants must also include information in the application that supports the selection of the identified local law enforcement and juvenile justice partner and describe how those partners' activities will support and be integrated in the SS/HS strategy. Applicants must contact their State Department of Mental Health to identify the relevant local public mental health authority. Mental health entities that have no legal authority in the administrative oversight of the delivery of mental health services are not acceptable as the sole mental health partner. Each SS/HS application must include the local public mental health authority (as defined elsewhere in this notice) as a partner. (The local public mental health authority is not required to provide mental health services to the target population but must provide administrative control or oversight of the delivery of mental health services.)

(a) The first of these two agreements is the Memorandum of Agreement for the SS/HS Partners. This agreement must contain the signatures of the school superintendent and authorized representatives for the local public mental health authority and local law enforcement and juvenile justice agencies. This agreement must include the following information: A mission statement for the SS/HS partnership; the goals and objectives of the partnership; desired outcomes for the partnership; a description of how information will be shared among partners; and a description of the roles and responsibilities of each partner. Applicants submitting as a consortium of LEAs must demonstrate partnership with the relevant local law enforcement agency (or agencies), public mental heath authority (or authorities) and juvenile justice agency (or agencies) for each of the participating LEAs in the consortium. Applicants must indicate those instances where a local law enforcement agency, public mental health authority, or juvenile justice agency has authority or jurisdiction for one or more of the participating LEAs in the consortium.

(b) The second of these two agreements is the Memorandum of Agreement for Mental Health Services. This agreement must contain the signatures of the school superintendent and the authorized representative of the local public mental health authority. The local public mental health authority must agree to provide administrative control and/or oversight of the delivery of mental health services. This agreement also must state procedures to be used for referral, treatment, and follow-up for children and adolescents with serious mental health problems. Applicants submitting as a consortium of LEAs must demonstrate partnership with the relevant public mental health authority (or authorities) for each of the participating LEAs in the consortium. Applicants must indicate those instances where a local public mental health authority has authority/jurisdiction for one or more of the participating LEAs in the consortium.

Proposed Funding Restrictions

We propose that no less than 7 percent of a grantee's budget for each year may be used to support costs associated with local evaluation activities.

Proposed Definitions

Several important terms associated with this competition are not defined in

the statute. We propose the following definitions:

1. Authorized representative—We propose defining the term *authorized representative* as the official within an organization with the legal authority to give assurances, make commitments, enter into contracts, and execute such documents on behalf of the organization as may be required by the Department of Education (the Department), including certification that commitments made on grant proposals will be honored and that the applicant agrees to comply with the Department's regulations, guidelines, and policies.

2. Local law enforcement agency—We propose defining the term *local law enforcement agency* as the agency (or agencies) that has law enforcement authority for the LEA. Examples of local law enforcement agencies include: municipal, county, and state police; tribal police and councils; and sheriffs' departments.

3. Local public mental health authority—We propose defining the term *local public mental health authority* as the entity legally constituted (directly or through contract with the State mental health authority) to provide administrative control or oversight of mental health services delivery within the community.

4. Local juvenile justice agency—We propose defining the term *local juvenile justice agency* as an agency or entity at the local level that is officially recognized by state or local government to address juvenile justice system issues in the communities to be served by the grant. Examples of juvenile justice agencies include: Juvenile justice task forces; juvenile justice centers; juvenile or family courts; juvenile probation agencies; and juvenile corrections agencies.

5. Urban districts—We propose defining the term *urban districts* as those with a designated locale code of Large Central City (1) or Mid-Size Central City (2) using the National Center for Education Statistics' National Public School and School District Locator (available online at *http://nces.ed.gov/ccd/districtsearch/*).

6. Suburban districts—We propose defining the term *suburban districts* as those with a designated local code of Urban Fringe of Large City (3) or Urban Fringe of Mid-Size City (4) using the National Center for Education Statistics' National Public School and School District Locator (available online at *http://nces.ed.gov/ccd/districtsearch/*).

7. Rural districts—We propose defining the term *rural districts* as those with a designated local code of Large Town (5), Small Town (6) or Rural, outside MSA (7), or Rural, inside MSA (8) using the National Center for Education Statistics' National Public School and School District Locator (available online at *http://nces.ed.gov/ccd/districtsearch/*).

Executive Order 12866

This notice of proposed priority, selection criteria, requirements and definitions has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priority, selection criteria, requirements and definitions are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priority, selection criteria, requirements and definitions we have determined that the benefits of the proposed priority justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of potential costs and benefits: The potential costs associated with this proposed priority, selection criteria, requirements, and definitions are minimal while the benefits are significant. Grantees may anticipate costs with completing the application process in terms of staff and partner time, copying, and mailing or delivery.

The benefit of this proposed priority, selection criteria, requirements, and definitions is that grantees that develop a comprehensive, community-wide SS/HS plan may receive significant Federal assistance to support the implementation and enhancement of prevention and intervention activities, programs and services that create safe and drug-free schools and promote healthy childhood development.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of the proposed Federal financial assistance.

This document provides early notification of our specific plans and action for this program.

Applicable Program Regulations

The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 98, 99, and 299.

Electronic Access to This Document

You may view this document, as well as other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

(Catalog of Federal Domestic Assistance Number: 84.184L Safe Schools/Healthy Students.)

Program Authority: Safe and Drug-Free Schools and Communities Act (20 U.S.C. 7131); Public Health Service Act (42 U.S.C. 290aa); and Juvenile Justice and Delinquency Prevention Act (42 U.S.C. 5614(b)(4)(e) and 5781 *et seq.*).

Dated: March 16, 2004.

Deborah Price,

Deputy Under Secretary for Safe and Drug-Free Schools.

[FR Doc. 04–6195 Filed 3–17–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance; Hearings

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming hearing of the Advisory Committee on Student Financial Assistance. Individuals who will need accommodations for a disability in order to attend the hearing (*i.e.,* interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Monday, April 5, 2004, by

contacting Ms. Hope M. Gray at 202–219–2099 or via e-mail at *hope.gray@ed.gov.* We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The hearing site is accessible to individuals with disabilities. This notice also describes the functions of the Committee. Notice of this hearing is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATE AND TIME: Thursday, April 15, 2004, beginning at 9 a.m. and ending at approximately 4 p.m.

ADDRESSES: The Fashion Institute of Design and Merchandising, Museum Gallery, Ground Floor, 919 South Grand Avenue, Los Angeles, CA 90015–1421.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC 20202–7582, (202) 219–2099.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act. In addition, Congress expanded the Advisory Committee's agenda in the Higher Education Amendments of 1998 in several important areas: Access, Title IV modernization, distance education, and early information and needs assessment. Specifically, the Advisory Committee is to review, monitor and evaluate the Department of Education's progress in these areas and report recommended improvements to Congress and the Secretary.

The FY2004 Consolidated Appropriations Act (H.R. 2673), which was signed into law on January 23, 2004, directs the Advisory Committee to examine the federal financial aid formula and application forms in order to simplify and streamline the programs to make the system easier, more responsive, and fairer for students and families. The Advisory Committee is well suited to conduct this study, drawing upon the expertise of its eleven members and its experience conducting other broad studies on financial aid issues. The Advisory Committee also has the particular mission of examining the impact of these issues on low- and moderate-income students, a specific goal of the study.

The Advisory Committee has scheduled this regional field hearing to gather additional feedback about financial aid simplification. The proposed agenda includes expert testimony and discussion of the following issues: (a) The impact of complexities in the financial aid process on access to postsecondary education, particularly for low-income students; (b) opportunities for simplification in the financial aid process and forms; and (c) specific issues related to financial aid simplification, such as early notification of financial aid eligibility. The agenda also includes an afternoon session during which the general public is invited to provide oral and/or written testimony to the Advisory Committee on these issues. The Advisory Committee also invites the public to submit written comments regarding this study to the following e-mail address: *ADV_COMSFA@ed.gov.* We must receive your comments on or before April 23, 2004.

Space at the hearing is limited and you are encouraged to register early if you plan to attend the hearing. You may register through the Internet by e-mailing the Advisory Committee at *ADV_COMSFA@ed.gov* or at *Tracy.Deanna.Jones@ed.gov.* Please include your name, title, affiliation, complete address (including Internet and e-mail—if available), and telephone and fax numbers. If you are unable to register electronically, you may mail or fax your registration information to the Advisory Committee staff office at (202) 219–3032. Also, you may contact the Advisory Committee staff at (202) 219–2099. The registration deadline is Monday, April 5, 2004.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC from the hours of 9 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays. Information regarding the simplification study will also be made available on the Advisory Committee's Web site, *www.ed.gov/ACSFA.*

Dated: March 12, 2004.

Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 04–6118 Filed 3–17–04; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–214–000]

Cross Timbers Energy Services, Inc.; Complainant v. Transwestern Pipeline Company; Respondent; Notice of Complaint

March 12, 2004.

Take notice that on March 11, 2004, Cross Timbers Energy Services, Inc. (Cross Timbers) pursuant to rule 206 of practice and procedure of the Federal Energy Regulatory Commission, 18 CFR 385.206 (2003), filed a Complaint against Transwestern Pipeline Company (Transwestern).

Cross Timbers alleges that Transwestern violated Commission policy, Section 5 of the Natural Gas Act (NGA) 15 U.S.C. 717d, and the Commission's regulations applicable to open-access transportation of natural gas, 18 CFR part 284, by charging Cross Timbers maximum firm transportation reservation charges for the month of May 2003 effectively converting Cross Timbers' firm service into interruptible service. Commission policy requires interstate pipelines to provide firm shippers with reservation charge credits during times of scheduled maintenance. Section 3.2 of Transwestern's FTS–1 Rate Schedule is inconsistent with this Commission policy.

Cross Timbers requests that the Commission order Transwestern, pursuant to section 16 of NGS, 15 U.S.C. 717o, to make a monetary payment or provide billing adjustments or credits to Cross Timbers to prevent Transwestern's unjust enrichment. Cross Timbers also asks the Commission to require Transwestern to conform its tariff to Commission policy.

Any person desiring to be heard 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. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. 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 for TTY, contact (202) 502–8659. The answer to the complaint, 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: April 1, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–611 Filed 3–17–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11858–002]

Elsinore Municipal Water District and Nevada Hydro Company, Inc.; Notice Extending Deadline for Submitting Additional Study Requests

March 12, 2004.

Take notice that the date for filing study requests has been extended for the Lake Elsinore Advanced Pumped Storage Project, FERC Project No. 11858–02.

On February 2, 2004, Elsinore Municipal Water District and the Nevada Hydro Company, Inc. filed a license application for a major unconstructed project that would be located on Lake Elsinore and San Juan Creek, in the Town of Lake Elsinore, Riverside County, California.

In a notice tendering the license application for filing and soliciting additional study requests issued February 10, 2004, the Commission set the deadline for filing additional study requests as April 2, 2004. However, some of the consulted parties were not provided with a copy of the application by the applicant as set forth in the Commission's regulations.[1] Because the applicant will have just finished mailing the application to the consulted agencies and tribes as of March 12, 2004, we are extending the deadline for filing additional study requests to give all consulted parties a full 60-day period to review the application.

The deadline for filing additional study requests and requests for cooperating agency status is now May 11, 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 require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–613 Filed 3–17–04; 8:45 am]

BILLING CODE 6717–01–P

[1] *See* 18 CFR 4.38(d)(1).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD04–4–000]

Panel Member List for Hydropower Licensing Study Dispute Resolution; Notice Requesting Applications for Panel Member List for Hydropower Licensing Study Dispute Resolution

March 12, 2004.

This notice requests applications from those interested in being listed as potential panel members to assist in the Federal Energy Regulatory Commission's (Commission) study dispute resolution process for the integrated licensing process for hydropower projects.

Background

The Commission's final rule revising its regulations pertaining to hydroelectric licensing under the Federal Power Act encourages informal resolution of study disagreements. In cases where this is not successful, a formal study dispute resolution process is available for State and Federal agencies or Indian tribes with mandatory conditioning authority.[1]

The final rule provides that the disputed study must be submitted to a dispute resolution panel consisting of a person from Commission staff, a person from the agency or Indian tribe referring the dispute to the Commission, and a third person selected by the other two panelists from a pre-established list of persons with expertise in the disputed resource area.[2] The third panel member (TPM) will serve without compensation, except for certain allowable travel expenses to be borne by the Commission (31 CFR 301).

The role of the panel members is to make a finding, with respect to each disputed study request, on the extent to which each study criteria set forth in the regulations is or is not met,[3] and why. The panel will then make a recommendation to the Director of the Office of Energy Projects based on the panel's findings.

TPMs can only be selected from a list of qualified persons (TPM List) that is developed and maintained by the Commission. Each qualified panel member will be listed by area(s) and sub-area(s) of technical expertise, for example Fisheries Resources—Instream flow. The TPM list will be available to the public on the Commission's web site. All individuals submitting their applications to the Commission for consideration must meet the Commission's qualifications.

Application Contents

The applicant should describe in detail his/her qualifications in items 1–4 listed below.

1. Technical expertise, including education and experience in each resource area and sub-area for which the applicant wishes to be considered:

- Aquatic resources:
  - Water quality;
  - Instream flows;
  - Fish passage;
  - Macroinvertebrates;
  - Threatened and endangered species;
  - General.
- Terrestrial resources:
  - Wildlife biology;
  - Botany;
  - Wetlands ecology;
  - Threatened and endangered

[1] *See* § 5.14 of the final rule, which may be viewed on the Commission's Web site at *http://www.ferc.gov/home/Order2002.pdf*, and *see* excerpted attachment describing the formal dispute resolution process.

[2] These persons must not be otherwise involved with the proceeding.

[3] *See* § 5.9 of the final rule.

species;
  - General.
- Cultural resources.
- Recreational resources:
  - Whitewater boating;
  - General.
- Land use:
  - Shoreline management;
  - Visual/aesthetics;
  - General.
- Geology:
  - Geomorphology;
  - Erosion;
  - General.
- Socio-economics.
- Engineering:
  - Civil engineering;
  - Hydraulic engineering;
  - Electrical engineering;
  - General.

2. Knowledge of the effects of construction and operation of hydroelectric projects.

3. Working knowledge of laws relevant to expertise, such as: the Fish and Wildlife Coordination Act, the Endangered Species Act, the Clean Water Act, the Coastal Zone Management Act, the Wild and Scenic Rivers Act, the Federal Power Act or other applicable laws.

4. Ability to promote constructive communication about a disputed study.

How To Submit Applications

Applicants must submit their applications along with the names and contact information of three references. Applicants will be individually notified of the Commission's decision.

DATES: The application period closes on May 28, 2004. Additional future application periods may be announced by the Commission.

ADDRESSES: Applications must be filed electronically via the Internet. See the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. Applications should reference ''DOCKET No. AD04–4–000, NOTICE REQUESTING APPLICATIONS FOR PANEL MEMBER LIST FOR HYDROPOWER LICENSING STUDY DISPUTE RESOLUTION.''

Other Information: Requests submitted must be in Word, Times New Roman 13 pt. font, and must not be longer than 10 pages in length. Complete individual contact information must be provided, as formal interviews may be conducted either face to face or via teleconference as necessary prior to establishing the TPM List.

FOR FURTHER INFORMATION CONTACT: Lon Crow, Federal Energy Regulatory Commission, Office of Energy Projects, 888 First Street, NE., Washington, DC 20426; (202) 502–8749; *lon.crow@ferc.gov*.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–620 Filed 3–17–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–57–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Intent to Prepare an Environmental Assessment for the Proposed Abandonment of the Carter-Waters Pipeline and Request for Comments on Environmental Issues

March 12, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of a project involving the abandonment of 3.15 miles of the Carter-Waters 4-inch-diameter pipeline XS–6 and appurtenances and one domestic customer tap by Southern Star Central Gas Pipeline, Inc. (Southern Star) in Platte County, Missouri.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Southern Star provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Southern Star seeks authority to abandon in place and reclaim approximately 3.15 miles of the Carter-Waters 4-inch-diameter pipeline XS–6 and appurtenances and one domestic customer tap in Platte County, Missouri. About 1.53 miles would be removed and sold for scrap. The remaining 1.62 miles would be abandoned in place. The section of pipeline proposed to be abandoned lies parallel to Southern Star's existing Dearborn 6-inch pipeline XS–7 and is in Platte County, Missouri.

Abandonment in place is proposed for areas where Southern Star believes land restoration to original condition would be difficult, *e.g.*, pasture, terraces, creeks, and heavily wooded areas. These sections would be cut and capped causing minimal ground disturbance and minor interruption of land use. The remaining sections of the pipeline would be reclaimed and the land would be backfilled and restored to its prior condition. To facilitate pipe removal, Southern Star would utilize the existing right-of-way, which is 66 feet wide. Approximately 12.24 acres of right-of-way would be temporarily affected.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Abandonment

To facilitate pipe removal, Southern Star plans to utilize the existing right-of-way, which is 66 feet wide. After abandonment, either in place or by removal, Southern Star would relinquish the right-of-way to the landowner. Pipeline abandoned in place would also become the property of the landowner.

Temporary access to the right-of-way would be via field roads and existing rock paved roads along the first segment of the pipeline to be removed. Two options for access are proposed. Option 1 would affect 0.67 acre and Option 2 would affect 0.79 acre. A total of approximately 12.24 acres of right-of-way would be temporarily affected by the project.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope

[1] Southern Star's application was filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction activities associated with the removal of the pipeline under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise.

We will also evaluate possible abandonment alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section.

Currently Identified Environmental Issues

One of the issues identified that we think deserves attention based on a preliminary review of the abandonment of facilities and the environmental information provided by Southern Star is the concern expressed by a landowner about abandoning line segments in place at stream crossings. In order to avoid disturbance of stream banks and the associated riparian zone and to eliminate the need for stream bank restoration, Southern Star plans to abandon the pipeline in place where it crosses stream channels.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commenter, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket No. CP04–57–000.
- Mail your comments so that they will be received in Washington, DC on or before April 12, 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 on-line.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's rules of practice and procedure (18 CFR 385.214) (*see* appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERConlinesupport@ferc.gov*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/*

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

EventCalendar/EventsList.aspx along with other related information.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–612 Filed 3–17–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to File Application For A New License

March 12, 2004.

Take notice that the following notice of intent has been filed with the Commission and is available for public inspection:

a. *Type of Filing:* Notice of intent to file an application for new license.

b. *Project No.:* 120.

c. *Date Filed:* February 27, 2004.

d. *Submitted by:* Southern California Edison Company.

e. *Name of Project:* Big Creek No. 3 Hydroelectric Project.

f. *Location:* The project is located in Fresno County, California, within the Sierra National Forest. The project is situated on the San Joaquin River with the nearest towns being Big Creek, Shaver Lake, North Fork, and Auberry.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6.

h. Pursuant to section 16.19 of the Commission's regulations, the licensee is required to make available the information described in section 16.7 of the regulations. Such information is available from the Northern Hydro Regional Office, 54205 Mountain Poplar Road, Big Creek, CA 93605, (559)–893–3611.

i. *FERC Contact:* James Fargo, 202–502–6095, *james.fargo@ferc.gov*.

j. *Expiration Date of Current License:* February 28, 2009.

k. *Project Description:* The project consists of Dam 6 Forebay, a dam with a capacity of 993 acre-feet, Powerhouse No. 3 with five turbine generators with a total installed capacity of 174.45 megawatts, and the water conveyance system of unlined tunnels, steel piping, penstocks and valving.

l. The licensee states its unequivocal intent to submit an application for a new license for Project No. 120. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by February 28, 2007.

n. A copy of 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, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or TTY 202–502–8659. A copy is also available for inspection and reproduction at the address in item h above.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support as shown in the paragraph above.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–614 Filed 3–17–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

March 12, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12487–000.

c. *Date Filed:* January 30, 2004.

d. *Applicant:* Greensfields Irrigation District.

e. *Name of Project:* Gibson Dam Hydroelectric Project.

f. *Location:* The proposed project would be located at the Bureau of Reclamation's (BOR) Gibson Dam, on the Sun River in Teton and Lewis and Clark Counties, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Ed Everaert, Manager, Greensfields Irrigation District, P.O. Box 157, Fairfield, MT 59436, (406) 467–2533.

i. *FERC Contact:* Mr. Robert Bell, (202) 502–6062.

j. *Deadline for Filing Motions to Intervene, Protests and Comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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. Please include the project number (P–12487–000) on any comments or motions filed.

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 in 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. *Competing Application:* Project No. 12478–000; date filed: October 28, 2003; date issued: January 9, 2004; due date: March 9, 2004.

l. *Description of Project:* The proposed run-of-river project using the BOR's existing Gibson Dam would consist of: (1) a 100-foot-long, 10-foot-diameter steel penstock, (2) a powerhouse containing two 8 megawatt generating units with a total installed capacity of 16 megawatts, (3) a proposed 3-mile-long, 15 kilovolt transmission line, and (4) appurtenant facilities. The project would have an annual generation of 45 gigawatt-hours.

m. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a

proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

p. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

q. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

r. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

s. *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.

t. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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

u. *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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–615 Filed 3–17–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

March 12, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12488–000.

c. *Date Filed:* February 19, 2004.

d. *Applicant:* Aces Wild Farm and Ranch.

e. *Name of Project:* Wright Forge Pond Project.

f. *Location:* On the Winnetuxet River, in Plympton County, Massachusetts, utilizing the Wright Forge Pond Dam owned by the Town of Plympton, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Patricia Renee Pina, President, Aces Wild Farm and Ranch, 59 Parsonage Road, Plympton, MA 02367, (781) 585–3243.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for Filing Comments, Protests, and Motions to Intervene:* 60 days from the issuance date of this notice.

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. Please include the project number (P–12488–000) on any comments or motions filed.

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 in 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. *Description of Project:* The proposed project would consist of the following: (1) An existing 10-foot-high, 150-foot-long rockfill dam; (2) a pond with a surface area of 7 acres and a gross storage of 1.9 million cubic feet; (3) an 18-inch-diameter, 12-foot-long penstock; (4) a powerhouse containing one 2500 kilowatt turbine with a total capacity of 5 megawatts; (5) a concrete pad tailrace from the powerhouse to the Winnetuxet River; and (6) a 400-foot-long, 13.8 kilovolt transmission line. Applicant estimates that the average annual generation would be 26 kilowatt-hours and would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE.,

Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *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.

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 ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–616 Filed 3–17–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to File Application for a New License

March 12, 2004.

Take notice that the following notice of intent has been filed with the Commission and is available for public inspection:

a. *Type of Filing:* Notice of intent to file an application for new license.

b. *Project No.:* 2175.

c. *Date Filed:* February 27, 2003.

d. *Submitted by:* Southern California Edison Company.

e. *Name of Project:* Big Creek Nos. 1 and 2 Hydroelectric Project.

f. *Location:* The project is located in Fresno County, California, within the Sierra National Forest. The project is situated along Big Creek, a tributary to the San Joaquin River. The nearest communities are Big Creek, Shaver Lake, North Fork, and the City of Fresno.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6.

h. Pursuant to section 16.19 of the Commission's regulations, the licensee is required to make available the information described in section 16.7 of the regulations. Such information is available from the Northern Hydro Regional Office, 54205 Mountain Poplar Road, Big Creek, CA 93605, (559)–893–3611.

i. *FERC Contact:* James Fargo, 202–502–6095. *james.fargo@ferc.gov*.

j. *Expiration Date of Current License:* February 28, 2009.

k. *Project Description:* The project consist of Powerhouse No. 1 and 2, combining eight turbine/generation units, water conveyance systems for both powerhouses, unlined tunnels, steel piping, and penstocks.

l. The licensee states its unequivocal intent to submit an application for a new license for Project No. 120 Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by February 28, 2007.

n. A copy of 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 to access the document excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or TTY 202–502–8659. A copy is also available for inspection and reproduction at the address in item h above.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support as shown in the paragraph above.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–617 Filed 3–17–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, Scoping, Solicitation of Comments on the PAD and Scoping Document, and Identification Issues and Associated Study Requests

March 12, 2004.

a. *Type of Filing:* Notice of intent to file license application for a new license and commencing licensing proceeding.

b. *Project No.:* 2237–013.

c. *Date Filed:* January 15, 2004.

d. *Submitted by:* Georgia Power Company.

e. *Name of Project:* Morgan Falls Hydroelectric.

f. *Location:* On the Chattahoochee River, in Fulton and Cobb Counties, Georgia. The project occupies 6 acres of United States lands under the jurisdiction of the National Park Service.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's regulations.

h. *Potential Applicant Contact:* Chris M. Hobson, Vice President, Georgia Power Company, Environmental Affairs, 241 Ralph McGill Boulevard, N.E., BIN 10221, Atlanta, GA 30308–3374 Attn. George Martin.

i. *FERC Contact:* Janet Hutzel at (202) 502–8675 or e-mail at *janet.hutzel@ferc.gov*.

j. We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in paragraph o. below.

k. With this notice, we are initiating informal consultation with: (a) the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402 and (b) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Georgia Power Company as the Commission's non-Federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Georgia Power Company filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*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, of for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name (Morgan Falls Hydroelectric Project) and number (P–2237–013), and bear the heading ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by May 14, 2004.

Comments on the PAD and SD1, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission 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.

p. At this time, the Commission intends to prepare an Environmental Assessment on the project, in accordance with the National Environmental Policy Act.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Wednesday, April 14, 2004.
Time: 1 p.m.
Location: Chattahoochee Nature Center, 9135 Willeo Road, Roswell, Georgia, 30075; phone: (770) 992–2055.

Evening Scoping Meeting

Date: Wednesday, April 14, 2004.
Time: 6 p.m.

Location: Chattahoochee Nature Center, 9135 Willeo Road, Roswell, Georgia, 30075; phone: (770) 992–2055.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the Web at *http://www.ferc.gov*, using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Site Visit

The potential applicant and Commission staff will conduct a site visit of the project on Wednesday, April 14, 2004, starting at 9:30 a.m. All participants should meet at Chattahoochee Nature Center, located at 9135 Willeo Road, Roswell, Georgia, 30075. All participants are responsible for their own transportation. Anyone with questions about the site visit should contact Mr. George Martin of Georgia Power at (404) 506–1357 on or before April 9, 2004.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of Federal, State, and tribal permitting and certification processes; and (5) discuss the appropriateness of any Federal or State agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–618 Filed 3–17–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for a New License

March 12, 2004.

Take notice that the following notice of intent has been filed with the Commission and is available for public inspection:

a. *Type of Filing:* Notice of intent to file an application for new license.

b. *Project No.:* 67.

c. *Date Filed:* February 27, 2004.

d. *Submitted by:* Southern California Edison Company.

e. *Name of Project:* Big Creek Nos. 2A, 8, and Eastwood Hydroelectric Project.

f. *Location:* The project is located in Fresno County, California, within the Sierra National Forrest. The project facilities are situated on the South Fork San Joaquin River, Big Creek, and Stevenson Creek. The nearest communities are the towns of Big Creek and Shaver Lake.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6.

h. Pursuant to section 16.19 of the Commission's regulations, the licensee is required to make available the information described in section 16.7 of the regulations. Such information is available from the Northern Hydro Regional Office, 54205 Mountain Poplar Road, Big Creek, CA 93605, (559)–893–3611.

i. *FERC Contact:* James Fargo, 202–502–6095, *james.fargo@ferc.gov*.

j. *Expiration Date of Current License:* February 28, 2009.

k. *Project Description:* The project consists of three powerhouses, two major reservoirs, four moderate impoundments, six dams, nine small diversions, seven water conveyance systems, and a transmission line. Two major reservoirs: Florence Lake and Dam with a capacity of 64,406 acre-feet and Shaver Lake and Dam with a capacity of 135,568 acre-feet. The three powerhouses have a total installed capacity of 384.8 megawatts.

l. The licensee states its unequivocal intent to submit an application for a new license for Project No. 67. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by February 28, 2007.

n. A copy of 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 to access the document excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or TTY 202–502–8659. A copy is also available for inspection and reproduction at the address in item h above.

o. 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 as shown in the paragraph above.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–619 Filed 3–17–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2004–0076; FRL–7347–4]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting and Notice of Proposed AEGL Chemical

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) will be held on April 19–21, 2004, in Washington, DC. At this meeting, the NAC/AEGL Committee will address, as time permits, the various aspects of the acute toxicity and the development of Acute Exposure Guideline Levels (AEGLs) for the following chemicals: Acetone, acrolein, boron trichloride, bromine, butyl acrylate, carbon disulfide, chlorine trifluoride, chloroform, *N*, *N*-dimethylformamide, 2,4-dinitroaniline, 1,4-dioxane, disulfur dichloride, epichlorohydrin, ethyl acrylate, methacrylic acid, methanol, methyl bromide, methyl chloride, methyl 2-chloroacrylate, methyl mercaptan, methyl methacrylate, nitric acid, nitric oxide, nitrogen dioxide, peracetic acid, phenol, propylene oxide, sulfur dioxide, tetrachloroethylene, tetranitromethane, trichloroethylene, trimethylchlorosilane, and toluene.

DATES: A meeting of the NAC/AEGL Committee will be held from 10 a.m. to 5:30 p.m., on Monday, April 19, 2004; 8:30 a.m. to 5:30 p.m., on Tuesday, April 20, 2004; and from 8 a.m. to noon, on Wednesday, April 21, 2004.

ADDRESSES: The meeting will be held at the U.S. Department of Labor, Room numbers C5515 1A and 1B, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address:*TSCA-Hotline@epa.gov*.

For technical information contact: Paul S. Tobin, Designated Federal Officer (DFO), Economics, Exposure, and Technology Division (7406M), Office of Pollution Prevention and Toxics, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8557; e-mail address: *tobin.paul@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and amendments section 112r. It is possible that other Federal agencies besides EPA, as well as State agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2004–0076. 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 EPA's Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. EPA's Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. EPA's Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA's Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Meeting Procedures

For additional information on the scheduled meeting, the agenda of the NAC/AEGL Committee, or the submission of information on chemicals to be discussed at the meeting, contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

The meeting of the NAC/AEGL Committee will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the DFO to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meeting as observers are also encouraged to contact the DFO at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemical-specific information should be directed to the DFO.

III. Future Meetings

Another meeting of the NAC/AEGL Committee is scheduled for June 14–16, 2004.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Health.

Dated: March 9, 2004.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. E4–621 Filed 3–17–04; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL DEPOSIT INSURANCE CORPORATION

Intra-Agency Appeal Process: Guidelines for Appeals of Material Supervisory Determinations and Guidelines for Appeals of Deposit Insurance Assessment Determinations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice and request for comment.

SUMMARY: The Federal Deposit Insurance Corporation (''FDIC'') proposes to revise its Guidelines for Appeals of Material Supervisory Determinations; these revisions are intended to enhance the Supervision Appeals Review Committee (''SARC'') process by reconstituting the SARC and modifying the procedures for appeals to the SARC. The FDIC also proposes to issue Guidelines for Appeals of Deposit Insurance Assessment Determinations, which will reconstitute the Assessment Appeals Committee (''AAC''), and will also set forth procedures for pursuing appeals to the AAC. These changes are intended to benefit insured institutions seeking review of material supervisory determinations and assessment determinations.

DATES: Comments must be submitted on or before April 19, 2004.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Agency Web site: *http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments on the FDIC Web site.
- E-mail: *comments@FDIC.gov.* Include ''SARC/AAC Guidelines'' in the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments/Legal

ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

• Hand Delivery/Courier: Comments may be hand-delivered to the guard station located at the rear of the FDIC's 17th Street building (accessible from F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions received must include the agency name and use the title ''SARC/AAC Guidelines''. The FDIC may post comments on its Internet site at: *http://www.fdic.gov/regulations/laws/federal/propose.html.*

Docket: For access to the docket to read background documents or comments received, go to the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONCERNING THE SARC GUIDELINES CONTACT: Lisa K. Roy, Associate Director, Division of Supervision and Consumer Protection, (202) 898–3764; Christopher Bellotto, Counsel, Legal Division, (202) 898–3801, Federal Deposit Insurance Corporation, 550 17th St., NW., Washington, DC 20429.

FOR FURTHER INFORMATION CONCERNING THE AAC GUIDELINES CONTACT: William V. Farrell, Chief, Assessment Management Section, Division of Finance, (202) 416–7156; Diane Ellis, Associate Director, Division of Insurance and Research, (202) 898–8978; Lisa K. Roy, Associate Director, Division of Supervision and Consumer Protection, (202) 898–3764; Christopher Bellotto, Counsel, (202) 898–3801, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The FDIC is publishing for notice and comment proposed revisions to the Guidelines for Appeals of Material Supervisory Determinations as well as proposed Guidelines for Appeals of Deposit Insurance Assessment Determinations. The FDIC considers it desirable in this instance to garner comments regarding these guidelines, although notice and comment rulemaking may not be employed in making future amendments.

The proposed revised Guidelines for Appeals of Material Supervisory Determinations would be effective upon adoption and would supersede the FDIC's current Guidelines for Appeals of Material Supervisory Determinations that were adopted by the FDIC's Board of Directors on March 21, 1995. The proposed guidelines would incorporate changes to the composition of the SARC, reducing it from five to three voting members, and would make changes to the existing procedures governing SARC appeals. These amendments include new rules under which the FDIC's Division of Supervision and Consumer Protection (''DSC'') would issue written decisions if it denies requests for review of material supervisory determinations; if dissatisfied with the division's determination, institutions would decide for themselves whether to appeal to the SARC; and SARC decisions would be published, with exempt material redacted. The types of determinations that are eligible for review by the SARC and the standards by which such appeals are decided would remain unchanged.

The AAC provides for FDIC appellate review of assessment payment computation and assessment risk classification determinations. The proposed Guidelines for Appeals of Deposit Insurance Assessment Determinations will change the composition of the AAC, reducing it from seven to five voting members, and will set forth procedures to be followed by insured depository institutions that choose to appeal adverse assessment determinations they have received from the appropriate FDIC division. As with the SARC, AAC decisions would be published, with exempt material redacted. The types of determinations that are eligible for review by the AAC and the standards by which such appeals are decided would remain unchanged.

The FDIC has sought to conform the SARC and AAC structures and procedures to the extent appropriate, making both processes easier for institutions to navigate and the FDIC to administer.

I. Proposed Revised Guidelines for Appeals of Material Supervisory Determinations

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Public Law 103–325, 108 Stat. 2160) (''Riegle Act'') required the FDIC (as well as the other Federal banking agencies and the National Credit Union Administration Board) to establish an independent intra-agency appellate process to review material supervisory determinations. On March 21, 1995, the FDIC's Board of Directors adopted Guidelines for Appeals of Material Supervisory Determinations, which established and set forth procedures governing the SARC, whose purpose was to consider and decide appeals of material supervisory determinations as required by the Riegle Act.

A. Membership

As set forth in the original guidelines, the SARC consisted of the FDIC Vice Chairperson (as chair of the SARC), the Director of the Division of Supervision (''DOS''), the Director of the Division of Compliance and Consumer Affairs (''DCA''), the Ombudsman, and the General Counsel (or their designees).

The SARC guidelines were amended to add the Director of the Division of Insurance (now the Director of the Division of Insurance and Research (''DIR'')) as a voting SARC member, to provide formally that the Directors of DOS and DCA (now the DSC Director) would not vote on cases brought before the SARC by their respective (now consolidated) divisions, to provide that designees would be limited to the most senior members of a SARC member's staff, and to include Truth-in-Lending (Regulation Z) restitution. In addition, the SARC was expressly authorized to consider appeals of denied filings as set forth in 12 CFR 303.11(f) for which a Request for Reconsideration has been granted, other than denials of a change in bank control, change in senior executive officer or board of directors, or denial of an application pursuant to section 19 of the Federal Deposit Insurance Act (''FDI Act'') (which are contained in 12 CFR 308, subparts D, L, and M, respectively), if the filing was originally denied by the Director, Deputy Director or Associate Director of DSC.

While the current guidelines satisfy the Riegle Act's requirement to establish an independent appellate process for the review of material supervisory determinations, the proposed changes, based on eight years' experience since approval of the original 1995 guidelines, should serve to facilitate the disposition of SARC appeals and further underscore the perception of the SARC as a fair and independent high-level body for review of material supervisory determinations within the FDIC.

The FDIC is proposing to modify its guidelines and change the composition of the SARC so that division directors and the Ombudsman no longer serve on the SARC, and new SARC members are drawn from the most senior levels of the Corporation. The Director of the DSC, who is responsible for the operations of two former divisions (DOS and DCA) and who represents the division that made the material supervisory determination under review, the Director of DIR, as well as the Ombudsman, would no longer be SARC members. As revised, the SARC membership would consist of three (3) voting members: (1) One FDIC Board

member, either the Chairperson, the Vice Chairperson, or the Director (Appointive), as designated by the FDIC Chairperson (this person would serve as the Chairperson of the SARC); (2) and (3) one deputy to each of the FDIC Board members who are not designated as the SARC Chairperson. The General Counsel would be the fourth, and non-voting, member of the SARC. The FDIC Chairperson would designate alternate member(s) to the SARC if vacancies occur so long as the alternate member was not directly or indirectly involved in making or affirming the material supervisory determination under review. In addition, a member of the SARC could designate and authorize the most senior member of his or her staff—within the substantive area—to act on his or her behalf in SARC matters.

The DSC Director would retain the delegated authority formerly granted, respectively to the DOS and DCA Directors under the current SARC guidelines, to grant requests for review of material supervisory determinations in favor of banks dissatisfied with a decision made by their respective divisions.

The current guidelines preclude the Ombudsman from considering the merits of any material supervisory determination for which an appeal had been initiated or a final decision made by the SARC, other than in the Ombudsman's role as a SARC member. Under the proposed guidelines, the subject matter of a material supervisory determination that has been appealed to the SARC or that has been resolved in a final SARC decision is similarly ineligible for consideration by the Ombudsman. Any other problems, however, that an institution may have in dealing with the FDIC are eligible for consideration by the Ombudsman.

B. Appeal

Under the current SARC guidelines, if the Director of DSC determines not to grant a request for review of a material supervisory determination, no written determination is issued. Instead, the Director must forward that request directly to the SARC for its appellate determination. In this sense, the institution's request for review is also its appeal to the SARC, if the DSC Director does not grant the request. This process of automatic appeal to the SARC differs from the AAC process, under which an institution must file an appeal to the AAC if it wishes to obtain further review of a determination received at the division level.

Under the proposed SARC guidelines, an automatic appeal to the SARC is eliminated. Instead, institutions that wish to obtain SARC review of material supervisory determinations would be required to file an appeal—within 30 calendar days from the date of the division director's written determination—to the SARC. The FDIC believes that this procedural change will benefit both institutions seeking review of material supervisory determinations and the FDIC. Unlike the present process, institutions would receive a written determination issued by DSC within 30 days, setting forth the reasons for the division's denial. Based on DSC's determination, institutions could then decide for themselves whether to appeal to the SARC. Institutions may, for example, decide that the issue presented is not one that merits expending the time or effort of seeking a SARC determination. The SARC could also benefit from a diminished caseload since not every institution that receives a denial at the division level may choose to file a SARC appeal. Finally, the appeal requirement for SARC will bring that process closer in line with the AAC process, making both easier for institutions to navigate and the FDIC to administer.

An appeal to the SARC would be considered filed if received by the FDIC within 30 calendar days from the date of the determination being appealed or if placed in the United States mail within 30 calendar days from the date of that determination. Institutions would include their name and address, the name and address of any representative, a copy of the determination being appealed, and all of the reasons, factual or legal, why the institution disagrees with the DSC Director's determination. FDIC staff would analyze the filing for the SARC. Any FDIC staff analysis would be considered part of the intra-agency deliberative process and would not be disclosed to insured institutions. The decision of the SARC would be provided to the institution and would set forth the rationale for the agency's determination.

The original SARC guidelines permitted the institution to request an appearance before the SARC to present evidence or otherwise support its position, which the SARC may allow in its discretion. Under the proposed guidelines, the SARC would have the discretion, whether or not a request is made, to determine to allow an oral presentation. If an institution wishes to make an oral presentation, it should include in its appeal a statement to that effect. Oral presentations would generally be granted only if the SARC determines in its discretion that the oral presentation would be helpful or would otherwise be in the public interest. At the oral presentation, the institution would present its position and respond to any questions the SARC might have. The SARC could also require that FDIC staff participate in the oral presentation as the SARC deems appropriate.

Only matters previously reviewed at the division level, resulting either in a written determination or direct referral to the SARC, could be appealed to the SARC. Submission of new evidence not presented at the division level would be prohibited unless authorized by the SARC Chairperson. No discovery or other such rights would be created in the SARC process.

C. Other Provisions

The current guidelines also provide that while SARC decisions constitute the final supervisory determination of the FDIC, the SARC can reconsider its decision if new information is presented and good cause is shown why that information is material to the dispute. In practice, however, such new information has never been presented to the SARC, and therefore the FDIC proposes to eliminate this reconsideration provision. In doing so, the FDIC notes that both the SARC and the AAC have implicit authority to correct errors or omissions that may have occurred in the administrative process and to revise final decisions as necessary.

The types of determinations that are eligible for review by the SARC and the standards by which SARC appeals are decided remain unchanged.

II. Proposed Guidelines for Appeals of Deposit Insurance Assessment Determinations

The FDIC Board of Directors created the AAC in 1999 to provide a high-level process for considering all deposit insurance assessment appeals brought from determinations made by the appropriate FDIC Divisions. Responsibility for deposit insurance assessments is shared by the Division of Finance (''DOF''), DIR and, in some respects, DSC. DOF is responsible for calculating the assessments owed by individual insured institutions based on assessment risk classifications assigned by DIR, which in turn uses supervisory information provided by DSC. To calculate an institution's assessment, DOF applies the assessment rate that corresponds to the institution's assessment risk classification to that institution's assessment base. DOF determines the assessment base from deposit and other data submitted in the institution's Report of Condition or Thrift Financial Report. An insured

institution may request revision of its quarterly assessment payment by following the procedures set forth at 12 CFR 327.3(h); similarly, an insured institution may request review of its assessment risk classification by following the procedures set forth at 12 CFR 327.4(d). Having complied with those procedures and received a determination from the appropriate division, an institution dissatisfied with that division's determination may file an appeal with the AAC. After reviewing the determination made at the division level, the AAC will issue a final determination.

A. Membership

As presently constituted, the AAC membership consists of the Vice Chairperson of the Board (as Chairperson of the AAC), the Deputy to the Office of the Comptroller of the Currency's (''OCC'') member on the FDIC's Board of Directors, the Deputy to the Office of Thrift Supervision's (''OTS'') member on the FDIC's Board of Directors; the General Counsel, the Director of the Division of Supervision and Consumer Protection; the Deputy to the Chairperson and Chief Financial Officer or the DOF Director; and the DIR Director. Any member may designate the most senior members of his or her staff to act in the member's stead. If a member's division made the determination that is subject to appeal, that member or designee does not vote with respect to that appeal.

Since its creation in 1999, the AAC membership has included individuals who are knowledgeable and experienced in matters related to the FDIC's assessment activities, bringing to the AAC the necessary experience and judgment to make well-informed decisions concerning determinations on appeal. The FDIC believes that the long-range interests of both the agency and the institutions it insures are best served by assuring that all assessment determinations are as fair and accurate as possible, both in practice and in perception.

The FDIC is now proposing to modify the composition of the AAC by eliminating the division directors and drawing new members from the most senior levels of the Corporation. As revised, the AAC would consist of five (5) voting members: (1) One FDIC Board member, either the Vice Chairperson or the Director (Appointive), as designated by the FDIC Chairperson (this person would serve as Chairperson of the AAC); (2) a deputy to the FDIC Chairperson, to be designated by the FDIC Chairperson; (3) a deputy to the OCC member on the FDIC's Board of Directors; (4) a deputy to the OTS member on the FDIC's Board of Directors; and (5) a deputy to either the Vice Chairperson or the FDIC Director (Appointive), whoever is not the AAC Chairperson. The General Counsel would be the sixth, and non-voting, member of the AAC. The FDIC Chairperson would designate alternate member(s) to the AAC if vacancies occur so long as the alternate member was not directly or indirectly involved in making or affirming the determination under review. A member of the AAC could designate and authorize the most senior member of his or her staff within the substantive area to act on his or her behalf in AAC matters.

The proposed changes, which would eliminate division directors as AAC members, should serve to underscore the perception of the AAC as a fair and independent high-level body for review of assessment disputes.

B. AAC Proceedings

Under the FDIC's assessment regulations, institutions that dispute the computation of their quarterly assessment payments must comply with the filing requirements set forth at 12 CFR 327.3(h) and institutions that dispute their risk classification must comply with the filing requirements set forth at 12 CFR 327.4(d).

Current § 327.3(h) provides that an institution may request revision of the computation of its quarterly assessment payment and sets out the procedures for doing so. Any such request must be made within 60 days of the quarterly assessment invoice for which a revision is requested, or within 60 days of detection of an error in the institution's quarterly Call Report and must include any supporting documentation. Assessment audit and assessment refund determinations are also subject to review under section 327.3(h), although not expressly mentioned in the rule. Any additional information requested by the FDIC must be provided within 21 days. Section 327.3(h) mandates that the FDIC respond within 60 days and provides that the response should include the FDIC's determination wherever feasible; otherwise, the FDIC's determination—rendered by the Chief Financial Officer or designee (usually DOF)—is to be made as promptly as possible.

Under current § 327.4(d), an institution may request review of its assessment risk classification within 90 days from the date it receives notice of that classification by the FDIC. Supporting documentation must be included with the request. Any additional information requested by the FDIC must be provided within 21 days. The FDIC—through the appropriate division—either DIR or DSC—must promptly notify the institution of its determination.

An insured depository institution that is dissatisfied with the determination made by the appropriate division pursuant to 12 CFR 327.3(h) or 327.4(d) may appeal that determination to the AAC. The AAC will review the determination being appealed and, unless the AAC determines to refer the matter to the FDIC Board of Directors for consideration, render a final determination which will constitute final agency action. FDIC staff would analyze the filing for the AAC. Any FDIC staff analysis would be considered part of the intra-agency deliberative process and would not be disclosed to insured institutions. The decision of the AAC would be provided to the institution and would set forth the rationale for the agency's determination.

As with the SARC, the AAC would have the discretion, whether or not a request is made, to determine to allow an oral presentation. The institution's appeal should contain a statement regarding whether it wishes to make an oral presentation. Oral presentations would generally be granted only if the AAC determines in its discretion that oral presentation would be helpful or would otherwise be in the public interest. At the oral presentation, the institution would present its position and respond to any questions the AAC might have. The AAC could also require that FDIC staff participate as the AAC deems appropriate.

Only matters previously reviewed at the division level would be subject to AAC review. Submission of new evidence not presented at the division level would be prohibited unless authorized by the AAC Chairperson. No discovery or other such rights would be created in the AAC process.

Like the SARC, the AAC has implicit authority to correct errors that may have occurred in the administrative process and to revise final decisions as necessary.

For the aforementioned reasons, the FDIC Board of Directors proposes the Guidelines for Appeals of Material Supervisory Determinations be revised as set forth below. The Board's proposed Guidelines for Appeals of Deposit Insurance Assessment Determinations immediately follow the proposed revisions to the Guidelines for Appeals of Material Supervisory Determinations.

* * * * *

Proposed Revised Guidelines for Appeals of Material Supervisory Determinations

A. Introduction

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Public Law 103–325, 108 Stat. 2160) (''Riegle Act'') required the Federal Deposit Insurance Corporation (''FDIC'') to establish an independent intra-agency appellate process to review material supervisory determinations made at insured depository institutions that it supervises. The FDIC adopted its Guidelines for Appeals of Material Supervisory Determinations (''guidelines'') in 1995 and now proposes to revise them. The guidelines describe the types of determinations that are eligible for review and the process by which appeals will be considered and decided. The procedures set forth in these guidelines establish an appeals process for the review of material supervisory determinations by the Supervision Appeals Review Committee (''SARC'').

B. SARC Membership

The following individuals comprise the three (3) voting members of the SARC: (1) One FDIC Board member, either the Chairperson, the Vice Chairperson, or the FDIC Director (Appointive), as designated by the FDIC Chairperson (this person would serve as the Chairperson of the SARC); (2) and (3) one deputy to each of the FDIC Board members who are not designated as the SARC Chairperson. The General Counsel is a non-voting member of the SARC. The FDIC Chairperson may designate alternate member(s) to the SARC if there are vacancies so long as the alternate member was not involved in making or affirming the material supervisory determination under review. A member of the SARC may designate and authorize the most senior member of his or her staff within the substantive area of responsibility related to cases before the SARC to act on his or her behalf.

C. Institutions Eligible To Appeal

The guidelines apply to the insured depository institutions that the FDIC supervises (*i.e.*, insured State nonmember banks (except District banks) and insured branches of foreign banks) and also to other insured depository institutions with respect to which the FDIC makes material supervisory determinations.

D. Determinations Subject To Appeal

An institution may appeal any material supervisory determination pursuant to the procedures set forth in these guidelines. Material supervisory determinations include:

(a) CAMELS ratings under the Uniform Financial Institutions Rating System;

(b) EDP ratings under the Uniform Interagency Rating System for Data Processing Operations;

(c) Trust ratings under the Uniform Interagency Trust Rating System;

(d) CRA ratings under the Revised Uniform Interagency Community Reinvestment Act Assessment Rating System;

(e) Consumer compliance ratings under the Uniform Interagency Consumer Compliance Rating System;

(f) Registered transfer agent examination ratings;

(g) Government securities dealer examination ratings;

(h) Municipal securities dealer examination ratings;

(i) Determinations relating to the adequacy of loan loss reserve provisions;

(j) Classifications of loans and other assets in dispute the amount of which, individually or in the aggregate, exceed 10 percent of an institution's total capital;

(k) Determinations relating to violations of a statute or regulation that may impact the capital, earnings, or operating flexibility of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution;

(l) Truth in Lending (Regulation Z) restitution;

(m) Filings made pursuant to 12 CFR 303.11(f), for which a Request for Reconsideration has been granted, other than denials of a change in bank control, change in senior executive officer or board of directors, or denial of an application pursuant to section 19 of the FDI Act (which are contained in 12 CFR 308, subparts D, L, and M, respectively), if the filing was originally denied by the DSC Director, Deputy Director or Associate Director; and

(n) Any other supervisory determination (unless otherwise not eligible for appeal) that may impact the capital, earnings, operating flexibility, or capital category for prompt corrective action purposes of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution.

Material supervisory determinations do not include:

(a) Decisions to appoint a conservator or receiver for an insured depository institution;

(b) Decisions to take prompt corrective action pursuant to section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o;

(c) Determinations for which other appeals procedures exist (such as determinations of deposit insurance assessment risk classifications and payment calculations);

(d) Decisions to initiate formal enforcement actions under section 8 of the Federal Deposit Insurance Act, 12 U.S.C. 1818 (including assessment of civil money penalties) or under any other provisions of law or regulation; and

(e) Decisions to initiate informal enforcement actions (such as memoranda of understanding).

The FDIC recognizes that, although determinations to take prompt corrective action or initiate formal or informal enforcement actions are not appealable, the determinations upon which such actions may be based (*e.g.*, loan classifications) are appealable provided they otherwise qualify.

E. Good Faith Resolution

An institution should make a good faith effort to resolve any dispute concerning a material supervisory determination with the on-site examiner and/or the appropriate Regional Office. The on-site examiner and the Regional Office will promptly respond to any concerns raised by an institution regarding a material supervisory determination. Informal resolution of disputes with the on-site examiner and/or the appropriate Regional Office is encouraged, but seeking such a resolution is not a condition to filing a request for review with the Division of Supervision and Consumer Protection or an appeal to the SARC under these guidelines.

F. Filing a Request for Review With the FDIC Division of Supervision and Consumer Protection

An institution may file a request for review of a material supervisory determination with the Director, Division of Supervision and Consumer Protection, 550 17th Street NW., Room F–4076, Washington, DC 20429, within 60 calendar days following the institution's receipt of a report of examination containing a material supervisory determination or other written communication of a material supervisory determination. A request for review must be in writing and must include:

(a) A detailed description of the issues in dispute, the surrounding circumstances, the institution's position regarding the dispute and any arguments to support that position (including citation of any relevant statute, regulation, policy statement or other authority), how resolution of the dispute would materially affect the institution, and whether a good faith effort was made to resolve the dispute with the on-site examiner and the Regional Office; and

(b) A statement that the institution's board of directors has considered the merits of the request and authorized that it be filed.

The Director, Division of Supervision and Consumer Protection, will issue a written determination of the request for review, setting forth the grounds for that determination, within 30 days of receipt of the request. No appeal to the SARC will be allowed unless an institution has first filed a request for review with the Division of Supervision and Consumer Protection.

G. Appeal to the SARC

An institution that does not agree with the written determination rendered by the Director of the Division of Supervision and Consumer Protection must appeal that determination to the SARC within 30 calendar days from the date of that determination. The Director's determination will inform the institution of the 30-day time period for filing with the SARC and will provide the mailing address for any appeal the institution may wish to file. Failure to file within the 30-day time limit may result in denial of the appeal by the SARC. If the Director of the Division of Supervision and Consumer Protection determines that an institution is entitled to relief that the Director lacks delegated authority to grant, the Director may, with the approval of the Chairperson of the SARC, transfer the matter directly to the SARC without issuing a determination.

H. Filing With the SARC

An appeal to the SARC will be considered filed if the written appeal is received by the FDIC within 30 calendar days from the date of the division director's written determination or if the written appeal is placed in the U.S. mail within that 30-day period. If the 30th day after the date of the division director's written determination is a Saturday, Sunday or Federal holiday, filing may be made on the next business day. The appeal should be sent to the address indicated on the determination being appealed.

I. Contents of Appeal

The appeal should be labeled to indicate that it is an appeal to the SARC and should contain the name, address, and telephone number of the institution and any representative, as well as a copy of the determination being appealed. Only matters previously reviewed at the division level, resulting in a written determination or direct referral to the SARC, may be appealed to the SARC. Evidence not presented at the division level may be submitted only if authorized by the SARC Chairperson. The institution should set forth all of the reasons, legal and factual, why it disagrees with the determination. Nothing in the SARC administrative process shall create any discovery or other such rights.

J. Burden of Proof

The burden of proof as to all matters at issue in the appeal, including timeliness of the appeal if timeliness is at issue, rests with the institution.

K. Oral Presentation

The SARC may, in its discretion, whether or not a request is made, determine to allow an oral presentation. The SARC generally grants a request for oral presentation only if it determines that oral presentation would be helpful or would otherwise be in the public interest. If oral presentation is held, the institution will be allowed to present its positions on the issues raised in the appeal and to respond to any questions from the SARC. The SARC may also require that FDIC staff participate as the SARC deems appropriate.

L. Dismissal and Withdrawal

An appeal may be dismissed by the SARC if it is not timely filed, if the basis for the appeal is not discernable from the appeal, or if the institution moves to withdraw the appeal.

M. Scope of Review and Decision

The SARC will review the appeal for consistency with the policies, practices and mission of the FDIC and the overall reasonableness of and the support offered for the positions advanced, and notify the institution, in writing, of its decision concerning the disputed material supervisory determination(s) within 60 days from the date the appeal is filed, or within 60 days from oral presentation, if held. SARC review will be limited to the facts and circumstances as they existed prior to or at the time the material supervisory determination was made, even if later discovered, and no consideration will be given to any facts or circumstances that occur or corrective action taken after the determination was made.

N. Publication of Decisions

SARC decisions will be published. Published SARC decisions will be redacted to avoid disclosure of exempt information. Published SARC decisions may be cited as precedent in appeals to the SARC.

O. SARC Guidelines Generally

Appeals to the SARC will be governed by these guidelines. The SARC will retain the discretion to waive any provision of the guidelines for good cause; the SARC may adopt supplemental rules governing SARC operations; the SARC may order that material be kept confidential; and the SARC may consolidate similar appeals.

P. Limitation on Agency Ombudsman

The subject matter of a material supervisory determination for which either an appeal to the SARC has been filed or a final SARC decision issued is not eligible for consideration by the Ombudsman.

Q. Coordination With State Regulatory Authorities

In the event that a material supervisory determination subject to a request for review is the joint product of the FDIC and a State regulatory authority, the Director, Division of Supervision and Consumer Protection, will promptly notify the appropriate State regulatory authority of the request, provide the regulatory authority with a copy of the institution's request for review and any other related materials, and solicit the regulatory authority's views regarding the merits of the request before making a determination. In the event that an appeal is subsequently filed with the SARC, the SARC will notify the institution and the State regulatory authority of its decision. Once the SARC has issued its determination, any other issues that may remain between the institution and the State authority will be left to those parties to resolve.

R. Effect on Supervisory or Enforcement Actions

The use of the procedures set forth in these guidelines by any institution will not affect, delay, or impede any formal or informal supervisory or enforcement action in progress or affect the FDIC's authority to take any supervisory or enforcement action against that institution.

S. Effect on Applications or Requests for Approval

Any application or request for approval made to the FDIC by an institution that has appealed a material supervisory determination which relates to or could affect the approval of the application or request will not be considered until a final decision concerning the appeal is made unless otherwise requested by the institution.

T. Prohibition on Examiner Retaliation

The FDIC has an experienced examination workforce and is proud of its professionalism and dedication. FDIC policy prohibits any retaliation, abuse, or retribution by an agency examiner or any FDIC personnel against an institution. Such behavior against an institution that appeals a material supervisory determination constitutes unprofessional conduct and will subject the examiner or other personnel to appropriate disciplinary or remedial action. Institutions that believe they have been retaliated against are encouraged to contact the Regional Director for the appropriate FDIC region. Any institution that believes or has any evidence that it has been subject to retaliation may file a complaint with the Director, Office of the Ombudsman, Federal Deposit Insurance Corporation, 550 17th Street, Washington, DC 20429, explaining the circumstances and the basis for such belief or evidence and requesting that the complaint be investigated and appropriate disciplinary or remedial action taken. The Office of the Ombudsman will work with the Division of Supervision and Consumer Protection to resolve the allegation of retaliation.

* * * * *

Proposed Guidelines for Appeals of Deposit Insurance Assessment Determinations

A. Introduction

The Assessment Appeals Committee (''AAC'') was formed in 1999 and, pursuant to the direction of the FDIC Board of Directors, has been functioning as the appellate entity responsible for making final determinations pursuant to part 327 of the FDIC's regulations regarding the assessment risk classification and the assessment payment calculation of insured depository institutions. The AAC provides a process for considering all deposit insurance assessment appeals brought from determinations made by the appropriate FDIC divisions. The procedures set forth in these guidelines apply to all appeals to the AAC.

B. AAC Membership

The following individuals comprise the five (5) voting members of the AAC, representing each member of the FDIC Board of Directors: (1) One FDIC Board member, either the Vice Chairperson or the Director (Appointive), as designated by the FDIC Chairperson (this person would serve as Chairperson of the AAC); (2) one of the deputies to the FDIC Chairperson, to be designated by the FDIC Chairperson; (3) a deputy to the Office of the Comptroller of the Currency's member on the FDIC's Board of Directors; (4) a deputy to the Office of the Office of Thrift Supervision's member on the FDIC's Board of Directors; and (5) a deputy to either the Vice Chairperson or the Director (Appointive), whoever is not the AAC Chairperson. The General Counsel is a non-voting member of the AAC. The FDIC Chairperson may designate alternative member(s) for the AAC if vacancies occur. A member of the AAC may designate and authorize the most senior member of his or her staff within the substantive area of responsibility related to cases before the AAC to act on his or her behalf.

C. Institutions Eligible to Appeal

These guidelines apply to all depository institutions insured by the FDIC.

D. Determinations Subject to Appeal

The AAC, upon appeal by an insured depository institution, reviews determinations of the Director of the Division of Insurance and Research or the Director of the Division of Supervision and Consumer Protection made pursuant to the procedures set forth at 12 CFR 327.4(d) regarding the assessment risk classification assigned by the FDIC to the institution and renders a final determination. The AAC also, upon appeal by an insured depository institution, reviews determinations made pursuant to 12 CFR 327.3(h) by the Chief Financial Officer (or the Director of the Division of Finance, as designee) regarding the computation of the institution's assessment payment and renders a final determination.

E. Appeal to the AAC

An institution that does not agree with the written determination rendered by the appropriate division director pursuant to 12 CFR 327.4(d) and 12 CFR 327.3(h) must appeal that determination to the AAC within 30 calendar days from the date of the determination. The division director's determination will inform the institution of the 30-day time limit for filing with the AAC and will provide the mailing address for any appeal the institution may wish to file. Failure to file within the 30-day time period may result in denial of the appeal by the AAC. If a division director determines that an institution is entitled to relief that the director lacks delegated authority to grant, the director may, with the approval of the Chairperson of the AAC, transfer the matter directly to the AAC without issuing a determination.

F. Filing With the AAC

An appeal to the AAC will be considered filed if the written appeal is received by the FDIC within 30 calendar days from the date of the division director's written determination or if the written appeal is placed in the U.S. mail within that 30-day period. If the 30th day after the date of the division director's written determination is a Saturday, Sunday or Federal holiday, filing may be made on the next business day. The appeal should be sent to the address indicated on the determination being appealed.

G. Contents of Appeal

The appeal should be labeled to indicate that it is an appeal to the AAC and should contain the name, address, and telephone number of the institution and any representative, as well as a copy of the determination being appealed. Only matters previously reviewed at the division level, resulting in either a written determination or a direct referral to the AAC, may be appealed to the AAC. Evidence not presented at the division level may be submitted only if authorized by the AAC Chairperson. The institution should set forth all of the reasons, legal and factual, why it disagrees with the determination. Nothing in the AAC administrative process shall create any discovery or other such rights.

H. Burden of Proof

The burden of proof as to all matters at issue in the appeal, including timeliness of the appeal if timeliness is at issue, rests with the institution.

I. Oral Presentation

The AAC may, in its discretion, whether or not a request is made, determine to allow an oral presentation. The AAC generally grants a request for oral presentation only if it determines that oral presentation would be helpful or would otherwise be in the public interest. If oral presentation is held, the institution will be allowed to present its position on the issues raised in the appeal and to respond to any questions from the AAC. The AAC may also

require that FDIC staff participate as the AAC deems appropriate.

J. Dismissal and Withdrawal

An appeal may be dismissed by the AAC if it is not timely filed, if the legal or factual basis for the appeal is not discernable from the appeal, or if the institution moves to withdraw the appeal.

K. Scope of Review and Decision

The AAC will review all submissions concerning an appeal, review the final determination being appealed, consider any other matters it deems in its discretion to be appropriate, and issue a written decision within 60 days from the date the appeal is filed, or within 60 days from oral presentation, if held.

L. Publication of Decisions

AAC decisions will be published. Published AAC decisions will be redacted to avoid disclosure of exempt information. Published decisions of the AAC may be cited as precedent in appeals to the AAC.

M. AAC Guidelines Generally

Appeals to the AAC will be governed by these guidelines. The AAC will retain the discretion to waive any provision of the guidelines for good cause; the AAC may adopt supplemental rules governing AAC operations; the AAC may order that material be kept confidential; and the AAC may consolidate similar appeals.

N. Effect on Deposit Insurance Assessment Payments

The use of the procedures set forth in these guidelines by an insured institution will not affect, delay, or impede the obligation of that institution to make timely payment of any deposit insurance assessment.

Dated at Washington, DC, this 10th day of March, 2004.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 04–6112 Filed 3–17–04; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Tuesday, March 23, 2004, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, March 25, 2004, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and approval of minutes.
Draft Advisory Opinion 2004–06: Meetup, Inc. by counsel, Marc E. Elias and Brian G. Svoboda.
Legislative Recommendations 2004.
Routine Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Robert Biersack, Acting Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 04–6194 Filed 3–16–04; 11:48 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 1, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Managing Examiner) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Christine V. Lake, Brookfield, Wisconsin; to acquire voting shares of Ridgestone Financial Services, Inc., Brookfield, Wisconsin, and thereby indirectly acquire voting shares of Ridgestone Bank, Brookfield, Wisconsin.

Board of Governors of the Federal Reserve System, March 12, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–6054 Filed 3–17–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 12, 2004.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045–0001:

1. Mariner's Bancorp, Edgewater, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Mariner's Bank, Edgewater, New Jersey.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90

Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. First Holding Company of Cavalier, Inc., Cavalier, North Dakota; to acquire 100 percent of the voting shares of Argyle Financial Services, Inc., Argyle, Minnesota, and thereby indirectly acquire voting shares of Argyle State Bank, Argyle, Minnesota.

Board of Governors of the Federal Reserve System, March 12, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–6053 Filed 3–17–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 1, 2004.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Parkers Prairie Bancshares, Inc., Parkers Prairie, Minnesota; to acquire Waubun Insurance Agency, Waubun, Minnesota, and thereby engage in insurance agency activities in a town with a population not exceeding 5,000, pursuant to section 225.28(b)(11)(iii) of Regulation Y.

Board of Governors of the Federal Reserve System, March 12, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–6052 Filed 3–17–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0124]

Guidance for Industry: Animal Drug User Fees and Fee Waivers and Reductions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document for industry (#170) entitled ''Animal Drug User Fees and Fee Waivers and Reductions.'' The purpose of this document is to provide guidance to industry on the fee waiver provisions of the Animal Drug User Fee Act of 2003 (ADUFA). The guidance document is immediately in effect, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written comments on the guidance document to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http:///www.fda.gov/dockets/ecomments*. Comments should be identified with the full title of the guidance document and the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written requests for single copies of the guidance document to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

FOR FURTHER INFORMATION CONTACT: David Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: *dnewkirk@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On November 18, 2003, ADUFA (Public Law 108–130) was enacted. ADUFA amends the Federal Food, Drug, and Cosmetic Act and requires FDA to assess and collect user fees for certain applications, products, establishments, and sponsors. It also requires the agency to grant a waiver from or a reduction of fees in certain circumstances.

The purpose of the guidance document is to provide guidance on the types of fees FDA is authorized to collect and how to request waivers and reductions from FDA's animal drug user fees. It describes the types of fees and fee waivers and reductions, what information FDA recommends you submit in support of a request for a fee waiver or reduction, how to submit such a request, and FDA's process for reviewing requests.

FDA is making this guidance document immediately available because prior public participation was not feasible or appropriate. ADUFA's user fee provisions are already in effect, and it is essential for the agency to provide guidance on how to request fee waivers and reductions as quickly as possible. Although it was not feasible or appropriate to obtain comments before issuing the guidance, in accordance with this agency's procedures, FDA will accept comments on the guidance at any time.

II. Paperwork Reduction Act of 1995

FDA is announcing that a collection of information entitled ''Guidance for Industry: Animal Drug User Fees and Fee Waivers and Reductions'' has been approved by the Office of Management and Budget (OMB) under the emergency processing provisions of the Paperwork Reduction Act of 1995 (the PRA). According to the PRA, a collection of information should display a valid OMB control number. The valid OMB control number for this information collection is 0910–0540. It expires on September 30, 2004. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

III. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's GGPs regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the fee waiver provisions of ADUFA. It does not create or confer any rights for

or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain this guidance from the CVM home page at *http://www.fda.gov/cvm*.

Dated: March 15, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–6182 Filed 3–16–04; 11:10 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities Under Emergency Review by the Office of Management and Budget

The Substance Abuse and Mental Health Services Administration (SAMHSA) has submitted the following request (see below) for emergency OMB review under the Paperwork Reduction Act (44 U.S.C. Chapter 35). OMB approval has been requested by April 15. A copy of the information collection plans may be obtained by calling the SAMHSA Reports Clearance Officer on (301) 443–7978.

Title: Reach Out Now National Teach-In Initiative Feedback Form.

OMB Number: 0930-New.

Frequency: On-occasion.

Affected public: Not-for profit institutions; State, Local or Tribal governments.

Under section 515(b) of the Public Health Service Act (42 U.S.C. 290bb–21), the Center for Substance Abuse Prevention (CSAP) of the Substance Abuse and Mental Health Services Administration (SAMHSA) is directed to develop effective alcohol abuse prevention literature and, to assure the widespread dissemination of prevention materials among States, political subdivisions, and school systems. Each April, SAMHSA collaborates with Scholastic Inc. in the April distribution of *Reach Out Now: Talk to Your Fifth Grader About Underage Alcohol Use*, a supplement created and distributed by Scholastic Inc.

Beginning in April 2004, SAMHSA will sponsor a national Teach-In to foster a conversation with fifth graders on the dangers of early alcohol use. State substance abuse prevention directors have nominated organizations to participate in this program. The Teach-In program builds upon the highly successful national initiative of the Leadership to Keep Children Alcohol Free, which is focused on preventing alcohol use among children ages 9 to 15 and is spearheaded by more than 40 current and past Governors' spouses, who have held or supported Reach Out Now Teach-Ins in their States.

Organizations that agree to participate in this SAMHSA initiative will be asked to provide feedback information about the implementation and results of the Teach-In event in their community school.

Number of respondents	Responses/respondent	Burden/response (hrs.)	Total burden hours
75	1	.167	13

Emergency approval is being requested because of the importance of obtaining this feedback information so that program modifications can be identified, as appropriate, for next year's national Teach-In program.

Written comments and recommendations concerning the proposed information collection should be sent by April 15 to: John Kraemer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: March 11, 2004.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 04–6080 Filed 3–17–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–17238]

Small Business Non-Retaliation Policy

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces adoption of a small business non-retaliation policy. If a small business questions or lodges a complaint regarding a Coast Guard policy or action, or seeks outside help in dealing with a Coast Guard policy or action, the Coast Guard will not retaliate in any fashion. The full policy is set out in the body of this notice.

DATES: The Commandant of the Coast Guard approved the small business non-retaliation policy on February 11, 2004. The policy remains in effect until modified or rescinded by the Commandant.

ADDRESSES: Although we are not requesting them, you may make comments on this notice. To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*.

(2) By mail to the Docket Management Facility, (USCG–2004–17238), U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public will become part of this

docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Rich Walter, Office of Regulations and Administrative Law (G–LRA), U.S. Coast Guard, telephone 202–267–1534. If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION: The Office of the National Ombudsman of the U.S. Small Business Administration (SBA) has asked each Federal agency to adopt a policy that the agency will not retaliate against small businesses that question or complain about the way the agency does business. On February 11, 2004, the head of our agency, the Commandant of the Coast Guard, approved the following statement of Coast Guard policy:

If you question or lodge a complaint regarding a Coast Guard policy or action, to us or to anyone else, or if you seek outside help in dealing with a Coast Guard policy or action, the Coast Guard will not retaliate against you in any fashion. The Coast Guard wants you to be able to comment, question, or lodge a complaint about our policies or actions without fear that we will retaliate or try to discourage future questions or complaints. If you think the Coast Guard has broken this promise, we will investigate, take appropriate action, and make sure that mistakes are not repeated. You may comment, ask questions, or file a complaint about Coast Guard policies or actions by contacting your local Coast Guard office, or you can also contact the Small Business Administration Office of the National Ombudsman at 888–REG–FAIR (734–3247), fax: 202–481–5719, email: *ombudsman@sba.gov.*

Small businesses generally are independently owned and operated and are not dominant in their field. If you need help determining whether or not your business qualifies as a ''small business'', contact the SBA's Office of the National Ombudsman using the information given in the preceding paragraph.

Dated: March 11, 2004.

John E. Crowley, Jr.,

Rear Admiral, U.S. Coast Guard, Judge Advocate General.

[FR Doc. 04–6037 Filed 3–17–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Notice of Intent To Request Approval From the Office of Management and Budget (OMB) for Three New Collections of Information; Registered Traveler (RT) Pilot Program; Satisfaction and Effectiveness Measurement Data Collection Instruments

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: TSA invites public comment on the information collection requirement abstracted below that will be submitted to OMB in compliance with the Paperwork Reduction Act of 1995.

DATES: Send your comments by May 17, 2004.

ADDRESSES: Comments may be delivered to Pamela Friedmann, Director Public Private Initiatives, Office of Transportation Security Policy, TSA Headquarters, West Tower, 11th Floor, TSA–9, 601 S. 12th Street, Arlington, VA 22202–4220; or by e-mail at *pamela.friedmann@dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Conrad Huygen, Privacy Act Officer, Information Management Programs, TSA Headquarters, West Tower 412–S, TSA–17, 601 S. 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1954; facsimile (571) 227–2912.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for submission of clearance of the following information collection, TSA solicits comments in order to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Description of Data Collection

TSA plans to conduct a pilot technology program in 2004, in a limited number of airports, to test and evaluate the merits of the Registered Traveler (RT) concept. This pilot program (RT Pilot) is designed to positively identify qualified, known travelers via advanced identification technologies for the purposes of expediting those passengers' travel experience at the airport security checkpoints and thereby enabling TSA to improve the allocation of its limited security resources.

TSA will collect and retain a minimal amount of personal information from individuals who volunteer to participate in the RT Pilot that will be used to verify an applicant's claimed identity, complete a background check, and, if applicable, issue an identification token prior to enrollment in the program. In addition, TSA will administer two instruments to measure customer satisfaction and to collect data on the effectiveness of the pilot technologies and business processes. The first instrument will be a survey of a representative percentage of the RT Pilot participants. The second instrument will be an interview conducted with the key stakeholders at sites participating in the RT Pilot. All surveys and interviews will be voluntary and anonymous.

The collection of information from individuals who volunteer to participate in the RT Pilot will be gathered electronically. This not only fulfills the requirements of the Government Paperwork Elimination Act, but it also facilitates the collection and processing of the data and provides an efficient means of retrieving credential information. Due to operational constraints and practical considerations, the RT customer service surveys and interviews will be conducted manually. RT surveys will be distributed at airports and the respondents may freely choose not to participate. The respondents who choose to participate in the surveys will be asked to return the completed survey in less than 30 days from the time of receipt; they may choose not to comply with this request. Key stakeholders involved in the RT Pilot will be asked to designate representative(s) to participate in short, individual interview sessions intended to evaluate the effectiveness of the RT Pilot from the stakeholders' perspective and to gather any additional feedback the stakeholder may wish to share. Stakeholders who choose to participate in the interview sessions will be asked to schedule an interview with TSA no later than 30 days after the completion

of the RT Pilot. Interview sessions will be conducted on a one-on-one basis at mutually agreed upon locations. Stakeholders may choose not to participate in the interview sessions.

Burden Estimates of Data Collection

For the initial RT Pilot program volunteer enrollments, we expect a total of 5,000 respondents and, based on an estimate of a 10-minute burden per respondent, a maximum total burden program-wide of 833 hours. For the survey submissions, we expect a total of 750 respondents and, based on an estimate of a 15-minute burden per respondent, a maximum total burden program-wide of 187.5 hours. For the stakeholder interview sessions, we expect approximately 20 stakeholder representatives to participate and, based on an estimate of a 45-minute burden per interview, a maximum total burden of 15 hours.

Issued in Arlington, Virginia, on March 12, 2004.

Susan T. Tracey,

Chief Administrative Officer.

[FR Doc. 04–6074 Filed 3–17–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910BJ–4489] ES–052118, Group 36, Illinois

Notice of Filing of Plat of Survey; Illinois

The Bureau of Land Management (BLM) will officially file the plat of the dependent resurvey of a portion of the subdivisional lines and the survey of the Lock and Dam No. 26 acquisition boundary in Township 9 South, Range 2 West, Fourth Principal Meridian, Illinois, accepted on March 11, 2004, in the Eastern States Office, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

The survey was requested by the U.S. Army Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey must be submitted in writing to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to the date of the official filing.

We will place a copy of the plat we described in the open files. Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: March 11, 2004.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 04–6078 Filed 3–17–04; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910BJ–4489] ES–052117, Group 35, Illinois

Notice of Filing of Plat of Survey; Illinois

The Bureau of Land Management (BLM) will officially file the plat of the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines and the survey of the Lock and Dam Nos. 25 and 26 acquisition boundaries in Township 10 South, Range 2 West and the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines and the survey of the Lock and Dam No. 25 acquisition boundary in Township 10 South, Range 3 West, Fourth Principal Meridian, Illinois, accepted on March 11, 2004, in the Eastern States Office, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

The survey was requested by the U.S. Army Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey must be submitted in writing to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to the date of the official filing.

We will place a copy of the plat we described in the open files. Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: March 11, 2004.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 04–6079 Filed 3–17–04; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 42 U.S.C. 9622(d)(2) and 28 CFR 50.7, notice is hereby given that on March 5, 2004, a proposed Consent Decree in *United States et al.* v. *Adams Family Trust, et al.*, Civil Action Number CV 04–1490–RSWL (CWx), was lodged with the United States District Court for the Central District of California.

The consent decree resolves claims against 38 defendants brought by the United States on behalf of the Environmental Protection Agency (''EPA'') and by the California Department of Toxic Substances Control (''DTSC'') under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607, for response costs incurred and to be incurred by EPA and DTSC in responding to the release and threatened release of hazardous substances at the El Monte Operable Unit of the San Gabriel Valley Area 1 Superfund Site in Los Angeles County, California. Under the Consent Decree, the Defendants will pay $1,932,500 plus interest for past costs, pay all of EPA and DTSC's future costs relating to the interim remedy for the El Monte Operable Unit, and perform the interim remedy for the El Monte Operable Unit. The United States and DTSC covenant not to sue the 38 Defendants regarding the past costs, the interim remedy work, and future costs associated with the interim remedy work required to be performed under the Consent Decree.

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 et al.* v. *Adams Family Trust, et al.*, DOJ Ref. #90–11–2–354/3. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Consent Decree may be examined at the Office of the United States Attorney, 300 North Los Angeles Street, Los Angeles, California 90012, and the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *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 20041–7611, 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 $25.50 (25 cents per page reproduction cost) payable to the U.S. Treasury, to obtain a copy of the Consent Decree, excluding the numerous pages of attachments. To obtain the entire Consent Decree, including all attachments, please enclose a check in the amount of $82.75 payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–6058 Filed 3–17–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act and the Resource Conservation and Recovery Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that on March 4, 2004, a proposed consent decree in *United States and Kansas Department of Health and Environment, ex rel. State of Kansas* v. *Coffeyville Resources Refining & Marketing, LLC and Coffeyville Resources Terminal, LLC,* Docket No. 04–1064–MLB, was lodged with the United States District Court for the District of Kansas. In this action brought pursuant to the Clean Air Act (''CAA'') and the Resource Conservation and Recovery Act (''RCRA''), the United States has requested the imposition of injunctive relief on the defendants. This action arose out of the defendants' recent acquisition of certain assets of Farmland Industries, Inc., including a refinery in Coffeyville, Kansas, and a terminal in Phillipsburg, Kansas. The United States has alleged that the refinery and terminal failed to meet several requirements of CAA and RCRA over a period of several years.

The Consent Decree requires the defendants to perform CAA injunctive relief at the refinery, and to provide financial assurance pursuant to RCRA for the refinery and the terminal The Consent Decree obliges the defendants to, among other things: (1) Install Best Available Control Technology emissions controls, specifically a Wet Gas Scrubber to control sulfur dioxide emissions and Selective Catalytic Reduction to control NO_x emissions, by 2010; (2) implement interim measures to reduce emissions of sulfur dioxide and NO_x; (3) implement a program for controlling benzene emissions; (4) control particulate and VOC emissions; and (5) provide financial assurance for RCRA corrective action totaling $15 million.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, United States Department of Justice, Environment and Natural Resources Division, Post Office Box 7611, Ben Franklin Station, Washington, DC 20044–7611 and should refer to *United States and State of Kansas* v. *Coffeyville Resources,* D.J. Ref. No. 90–5–2–1–07459/1.

The proposed consent decree may be examined at the office of the United States Environmental Protection Agency Region 7, 901 N. 5th Street, Kansas City, Kansas 66101. During the comment period the consent decree may be examined on the Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, Post Office Box 7611, Ben Franklin Station, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdog.job),* fax number (202) 514–0097, telephone confirmation number (202) 514–1547. In requesting a copy by mail, please enclose a check in the amount of $27.00 for *United States and State of Kansas* v. *Coffeyville Resources* (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. 04–6059 Filed 3–17–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act and the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy and 28 CFR 50.7, the Department of Justice gives notice that a proposed Consent Decree with Crown EG, Inc. (''Crown'') in the case captioned *United States and the State of Indiana* v. *Guide Corporation and Crown EG, Inc.,* Civil Action No. IP00–0702–C–Y/F (S.D. Ind.) was lodged with the United States District Court for the Southern District of Indiana on March 1, 2004. The proposed Consent Decree relates to a massive fish kill that occurred in the White River in December 1999 and January 2000, from the City of Anderson, Indiana downstream past the City of Indianapolis, Indiana. The Defendants—Guide Corporation and Crown—are alleged to have discharged industrial wastewater that caused the fish kill. A separate Consent Decree with Guide Corporation was finalized in September 2001.

The proposed Consent Decree would resolve civil claims of the United States and the State of Indiana against Crown under: (1) The Clean Water Act (the ''CWA''), 33 U.S.C. 1251 *et seq.,* and corresponding state law; (2) the natural resource damage provisions of section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607, CWA section 311(f), and corresponding State law; (3) the response cost recovery provisions of CERCLA section 107 and corresponding state law; and (4) state common law. To the extent provided by the proposed Consent Decree, certain specified benefits of the settlement would also extend to two Crown shareholders.

In the near future, Crown will be required to pay $250,000 into a Court Registry Account administered by United States District Court for the Southern District of Indiana. If the proposed Consent Decree is approved and entered by the Court, that $250,000 would be paid into a ''White River Restoration Fund'' established by the State, to fund fish restocking and river restoration projects.

The Department of Justice will receive comments relating to the Consent Decree for a period of thirty (30) days from the date of this publication. 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 and the State of Indiana* v. *Guide Corporation and Crown EG, Inc.,* Civil Action No. IP–00–0702–C–Y/F (E.D. Wis.) and D.J. Ref. 90–5–2–1–07043.

The Consent Decree may be examined at: (1) The Offices of the United States Attorney, 10 West Market Street, Suite 2100, Indianapolis, Indiana; and (2) the offices of EPA Region 5, 77 West Jackson Boulevard, 14th Floor, Chicago, Illinois. 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 $12.25 (49 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–6060 Filed 3–17–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 19, 2004 a proposed Consent Decree in *United States* v. *J.B. Stringfellow, Jr. et al.*, Civil Action No. 83–2501 (R), was lodged with the United States District Court for the Central District of California. The Complaint in this action was brought pursuant to, *inter alia*, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.*, to recover costs incurred in connection with remedial activities at the Stringfellow Superfund Site in Riverside, California, and to obtain injunctive relief requiring the defendants to take further remedial actions at the Site.

The proposed Consent Decree resolves issues arising out of the implementation of a 1992 Consent Decree, requires payment to the United States of approximately $1.6 million as reimbursement for costs of response at the Site, and resolves the claims as to all but one party of this action.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. Comments should refer to *United States* v. *J.B. Stringfellow, Jr. et al.*, Civil Action No. 83–2501 (R), D.J. Ref. No. 90–11–2–24.

The proposed Consent Decree may be examined at either of the following locations: (1) The Office of the United States Attorney, Central District of California, Federal Building, Room 7516, 300 North Los Angeles Street, Los Angeles, California; or (2) Office of Regional Counsel, Environmental Protection Agency, 75 Hawthorne St., San Francisco, California. 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 can be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the consent decree, please enclose a check in the amount of $11.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen M. Katz,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. 04–6061 Filed 3–17–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0020(2004)]

Training Grant Application; Extension of the Office of Management and Budget's (OMB) 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 its Training Grant Application.

DATES: Comments must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or received) by May 17, 2004.

Facsimile and electronic transmission: Your comments must be received by May 17, 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 1218–0020(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: When 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, ICR 1218–0020(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 *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 Todd Owen at (202) 693–2222.

FOR FURTHER INFORMATION CONTACT: Cindy Bencheck, Division of Training and Educational Programs, OSHA Office of Training and Education, 1555 Times Drive, Des Plaines, Illinois 60018; telephone (847) 297–4810; e-mail: *cindy.bencheck@oti.osha.gov;* or facsimile: (847) 297–4874.

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 OSHA Web page. Please note you cannot attach materials such as studies or journal articles to electronic comments. If 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 there may by significant delay 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.

Section 21 of the Occupational Safety and Health Act of 1970 (the ''OSH Act'') (29 U.S.C. 670) authorizes the Occupational Safety and Health administration (''OSHA'' or the ''Agency'') to conduct directly, or through grants and contracts, education and training courses. These courses must ensure an adequate number of qualified personnel to fulfill the purposes of the Act, provide them with short-term training, inform them of the importance and proper use of safety and health equipment, and train employers and employees to recognize, avoid, and prevent unsafe and unhealthful working conditions.

Under section 21, the Agency awards grants to non-profit organizations to provide part of the required training. To obtain such as grant, an organization must complete the training grant application. OSHA uses the information in this application to evaluate: The organization's competence to provide the proposed training (including the qualifications of the personnel who manage and implement the training); the goals and objectives of the proposed training program; a workplan that describes in detail the tasks that the organization will implement to meet these goals and objectives; the appropriateness of the proposed costs; and compliance with Federal regulations governing nonprocurement debarment and suspension, maintaining a drug-free workplace, and lobbying activities. Also required is a program summary that Agency officials use to review and evaluate the highlights of the overall proposal.

After awarding a training grant, OSHA uses the workplan and budget information provided in the application to monitor the organization's progress in meeting training goals and objectives, as well as planned renewals at one-year intervals. An organization must submit separate applications for the initial award and for each renewal award.

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, including whether the information is useful;
- The accuracy of the Agency'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 proposes to extend OMB's approval of the collection of information (paperwork) requirements specified in the Training Grant Application. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information collection requirements.

Type of Review: Extension of currently approved information collection requirements.

Title: Training Grant Application.

OMB Number: 1218–0020.

Affected Public: Not-for-profit institutions.

Number of Respondents: 200.

Frequency: Annually.

Total Responses: 200.

Average Time Per Response: 59 hours.

Estimated Total Burden Hours: 11,050.

Estimated Cost (Operation and Maintenance): $398,327.

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 12th, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–6099 Filed 3–17–04; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0100(2004)]

Grantee Quarterly Progress Report; 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 requests comments concerning its proposed extension of the information-collection requirements specified by the Grantee Quarterly Progress Report.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or received) by May 17, 2004.

Facsimile and electronic transmissions: Your comments must be received by May 17, 2004.

ADDRESSES:

I. Submission of Comments

Regular mail, express delivery, hand-delivery, and messenger service: Submit your written comments and attachments to the OSHA Docket Office, Docket No. ICR–1218–0100(2004), U.S. Department of Labor, Room N–2625, 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., EST.

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, ICR 1218–0100(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 Todd Owen at (202) 693–2222.

FOR FURTHER INFORMATION CONTACT: Cynthia Bencheck, Division of Training and Educational Programs, OSHA Office

of Training and Education, 2020 S. Arlington Heights Road, Arlington Heights, Illinois 60005; telephone: (847) 297–4810; e-mail: *Bencheck.Cindy@dol.gov;* or facsimile: (847) 297–4874.

SUPPLEMENTARY INFORMATION

I. Submission of Comments in 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 webpage. Please note you cannot attach materials such as studies or journal articles to electronic comments. If 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 there may be a significant delay 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 material 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 (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct.

Section 21 of the Occupational Safety and Health Act of 1970 (the ''OSH Act'') (29 U.S.C. 670) authorizes the Occupational Safety and Health Administration (''OSHA'' or the ''Agency'') to conduct directly, or through grants and contracts, education and training courses. These courses must ensure an adequate number of qualified personnel to fulfill the purposes of the Act, provide them with short-term training, inform them of the importance and proper use of safety and health equipment, and train employers and employees to recognize, avoid, and prevent unsafe and unhealthful working conditions.

Under Section 21, OSHA awards training grants to nonprofit organizations to provide part of the required training. The Agency requires organizations that receive these grants to submit quarterly progress reports that provide information on their grant-funded training activities; these reports allow OSHA to monitor the grantee's performance and to determine if an organization is using grant funds as specified in its grant application. Accordingly, the Agency compares the information provided in the quarterly progress report to the quarterly milestones proposed by the organization in the workplan and budget that accompanied the grant application. This information includes: Identifier data (organization name and grant number); the date and location where the training occurred; the length of training (hours); the number of employees and employers attending training sessions provided by the organization during the quarter; a description of the training provided; a narrative account of the grant activities conducted during the quarter; and an evaluation of progress regarding planned versus actual work accomplished. This comparison permits OSHA to determine if the organization is meeting the proposed program goals and objectives, and spending funds in the manner described in the proposed budget.

Requiring these reports on a quarterly basis enables OSHA to identify workplan, training and expenditure discrepancies in a timely fashion so that it can implement appropriate action. In addition, this information permits the Agency to access an organization's ability to meet projected milestones and expenditures; this ability serves as one of the criteria used by the Agency in determining whether or not to renew the organization's training grant for subsequent years.

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, including whether the information is useful;
- The accuracy of the Agency'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 (paperwork) requirements specified in the Grantee Quarterly Progress Report. The Agency will summarize the comments submitted in response to this notice, and will include this summary, along with the comments, in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of currently approved information-collection requirements.

Title: Grantee Quarterly Progress Report.

OMB Number: 1218–0100.

Affected Public: Not-for-profit institutions.

Number of Respondents: 67.

Frequency: Quarterly.

Total Responses: 67.

Average Time Per Response: 12 hours.

Estimated Total Burden Hours: 3,216.

(Operations and Maintenance): $0.

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 at Washington, DC, on March 15, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–6100 Filed 3–17–04; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (04–044)]

Alternative Fuel Vehicle Acquisitions; Notice of Availability

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of NASA's annual report on its alternative fuel vehicle (AFV) acquisitions for fiscal year 2003.

SUMMARY: Under the Energy Policy Act of 1992 (42 U.S.C. 13211–13219) as amended by the Energy Conservation Reauthorization Act of 1998 (Pub. L. 105–388), and Executive Order 13149 (April 2000), ''Greening the Government Through Federal Fleet and

Transportation Efficiency,'' NASA's annual AFV reports are available on the following NASA Web site: *http://www.hq.nasa.gov/office/codej/codejlg/afv.htm.*

ADDRESSES: Logistics Management Division, NASA Headquarters, Code OJG, 300 E Street SW., Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: William Gookin, (202) 358–2306, or *william.e.gookin@nasa.gov.*

Jeffrey E. Sutton,

Assistant Administrator for Institutional and Corporate Management.

[FR Doc. 04–6138 Filed 3–17–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before May 3, 2004. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means: Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001. E-mail: *records.mgt@nara.gov*. FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Health and Human Services, Agency for Healthcare Research and Quality (N1–510–02–1, 7 items, 4 temporary items). Outputs and copies of electronic records associated with the Executive Secretariat Controlled Correspondence System. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of correspondence, master data files, and related documentation.

2. Department of Homeland Security, Information Analysis and Infrastructure Protection Directorate (N1–563–04–9, 1 item, 1 temporary item). Voluntary submissions of Critical Infrastructure Information that does not meet the requirements for protection contained in Section 214 of the Homeland Security Act of 2002. Records are received in all media and formats.

3. Department of Homeland Security, Federal Emergency Management Agency (N1–311–04–2, 3 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing relating to agreements with foreign governments to exchange emergency management expertise. Recordkeeping copies of these files are proposed for permanent retention.

4. Department of Homeland Security, Transportation Security Administration (N1–560–04–1, 14 items, 14 temporary items). Subject files, acquisition plans, contract files, unsolicited proposal files, contract dispute files, reports, and policy files accumulated by the Office of Acquisitions. Also included are electronic copies of records created using electronic mail and word processing.

5. Department of Homeland Security, Transportation Security Administration (N1–560–03–4, 18 items, 17 temporary items). Records of the Office of the Ombudsman relating to complaints made by air travelers and agency employees. Records include

administrative files, subject files, field office reports, complaints, investigative case files, training materials, and promotional materials. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of records relating to substantive inquiries, investigations, and independent reviews.

6. Department of Justice, Justice Management Division (N1–60–04–3, 1 item, 1 temporary item). Contact information concerning former agency employees. Records may be maintained in paper or as electronic records.

7. Department of State, Bureau of Administration (N1–59–04–1, 12 items, 12 temporary items). Records relating to G–8 Summit planning, including such records as program files, reports, meeting minutes, and informational videos and web pages used to disseminate information about the summit. Also included are electronic copies of documents created using word processing and electronic mail.

8. Department of the Treasury, Bureau of Engraving and Printing (N1–318–04–1, 7 items, 4 temporary items). Records relating to strategic planning and capital investment initiatives. Also included are electronic copies of records created using electronic mail or word processing. Proposed for permanent retention are recordkeeping copies of records relating to the agency's five-year strategic plan, capital portfolio documents, and files relating to major capital investment projects.

9. Department of the Treasury, Bureau of Engraving and Printing (N1–318–04–5, 15 items, 6 temporary items). Status reports and other facilitative records relating to testing currency products, counterfeit deterrence, and currency design. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of records relating to such matters as policy and research, counterfeit deterrence, and currency design.

10. Department of the Treasury, Bureau of Engraving and Printing (N1–318–04–14, 11 items, 11 temporary items). Records of the Inventory and Materials Division relating to managing the use of materials and forecasting future material requirements for the production of currency and other products. Records include material requirement plans, requisitions, inventory records, and material testing files. Also included are electronic copies of records created using electronic mail and word processing.

11. Department of the Treasury, Bureau of Engraving and Printing (N1–318–04–15, 17 items, 16 temporary items). Records of the Engineering and Maintenance Division relating to equipment and facility operations and maintenance, including electronic systems. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of drawings, plans, and related files pertaining to buildings owned by the agency.

12. Department of the Treasury, Bureau of Engraving and Printing (N1–318–04–16, 22 items, 21 temporary items). Records of the Currency Standards Division relating to the mutilation of currency, including electronic tracking systems. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of the Currency Verification and Destruction Manual.

13. Federal Mediation and Conciliation Service, Office of Labor Management Grants Administration (N1–280–04–01, 17 items, 17 temporary items). Records relating to agency grant programs, including case files, grant applications, contractual agreements, and grant contract dispute reviews. Also included are electronic copies of documents created using electronic mail and word processing.

14. Tennessee Valley Authority, Agency-wide, (N1–142–03–4, 80 items, 80 temporary items). Paper and electronic records relating to environmental matters, including air quality, asbestos abatement, drinking water safety, the management of hazardous wastes, and oil spills. Also included are electronic copies of documents created using electronic mail and word processing.

Dated: March 10, 2004.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 04–6083 Filed 3–17–04; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of title 5, United States Code.

1. *Date:* April 2, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the February 3, 2004, deadline.

2. *Date:* April 8, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Special Projects, submitted to the Division of Public Programs at the February 3, 2004, deadline.

3. *Date:* April 19, 2004.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for College and University Teachers, submitted to the Division of Education Programs at the March 1, 2004, deadline.

4. *Date:* April 20, 2004.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers, submitted to the Division of Education Programs at the March 1, 2004, deadline.

5. *Date:* April 20, 2004.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for We the People Challenge Grants, submitted to the Office of Challenge Grants at the February 2, 2004, deadline.

6. *Date:* April 22, 2004.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for We the People Challenge Grants, submitted to the Office of Challenge Grants at the February 2, 2004, deadline.

7. *Date:* April 22, 2004.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers, submitted to the Division of Education Programs at the March 1, 2004, deadline.

8. *Date:* April 23, 2004.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for College and University Teachers, submitted to the Division of Education Programs at the March 1, 2004, deadline.

9. *Date:* April 26, 2004.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for College and University Teachers, submitted to the Division of Education Programs at the March 1, 2004, deadline.

10. *Date:* April 27, 2004.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers, submitted to the Division of Education Programs at the March 1, 2004, deadline.

11. *Date:* April 29, 2004.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers, submitted to the Division of Education Programs at the March 1, 2004, deadline.

Heather Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. 04–6137 Filed 3–17–04; 8:45 am]
BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments Facility Operating Licenses Involving No Significant Hazards Considerations; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance; correction.

SUMMARY: This document corrects an entry in the biweekly notice appearing in the **Federal Register** on January 20, 2004 (69 FR 2735). The corrected information considers issuance of an amendment to Facility Operating License No. NPF–16, issued to Florida Power and Light Company, St. Lucie Plant, Unit No. 2 (Docket No. 50–389). This action is necessary to include text that was missing. This notice is being republished in its entirety.

FOR FURTHER INFORMATION CONTACT: Beverly A. Clayton, Office of Nuclear Reactor Regulation, Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3475, e-mail: *bac2@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 2743, near the bottom of the second column the notice starting with ''Florida Power and Light,'' and ending in the third column with ''NRC Section Chief: Allen G. Howe,'' should read as follows:

Florida Power and Light Company, Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: December 2, 2003.

Description of amendment request: The proposed amendment would revise the Technical Specifications to allow a reduction in the minimum reactor coolant system flow, corresponding to an increase in the steam generator tube plugging limit from 15 percent to 30 percent.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

None of the proposed changes to the Technical Specifications nor the reload methodology result in operation of the facility that would adversely affect the initiation of any accident previously evaluated. There is no adverse impact on any plant system. All systems will function as designed, and all performance requirements for these systems remain acceptable. The comprehensive engineering effort, performed to support the proposed changes, has included evaluations or analyses of all the accident analyses including the effects of ZIRLO™ fuel rod cladding. The DNBR and setpoint analyses have verified that the accident analyses criteria continue to be met.

Dose consequences acceptance criteria have been verified to be met for all the events.

Therefore, the proposed changes do not significantly increase the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any previously evaluated.

No new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed changes to the Technical Specifications and the reload methodology. The proposed changes have no adverse effects on any safety-related systems and do not challenge the performance or integrity of any safety-related system. The DNBR limits and trip setpoints associated with the respective reactor protection system functions have verified that the accident analyses criteria continue to be met.

Therefore, this amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The safety analyses of all design basis accidents, supporting the proposed changes to the Technical Specifications and the reload methodology, continue to meet the applicable acceptance criteria with respect to the radiological consequences, specified acceptable fuel design limits (SAFDLs), primary and secondary overpressurization, and 10 CFR 50.46 requirements. The DNBR and the setpoint analyses are performed on a cycle-specific basis to verify that the reactor protection system functions continue to provide adequate protection against fuel design limits. Revised steam line break and LOCA mass and energy releases were determined and used to confirm the overall containment response remains acceptable. The performance requirements for all systems have been verified to be acceptable from design basis accidents' consideration. The proposed amendment, therefore, will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of § 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Allen G. Howe.

Dated in Rockville, Maryland, this 12th day of March, 2004.

For the U.S. Nuclear Regulatory Commission.

Michael T. Lesar,

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

[FR Doc. 04–6081 Filed 3–17–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–2222/803–169]

Excelsior Venture Partners III, LLC, et al.; Notice of Application

March 12, 2004.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Advisers Act of 1940 (''Advisers Act'').

APPLICANTS: Excelsior Venture Partners III, LLC (''Excelsior''), U.S. Trust Company, N.A., on behalf of its separately identified division, U.S. Trust Company, N.A. Asset Management Division (the ''Investment Adviser'') and United States Trust Company of New York, on behalf of its separately identified division, U.S. Trust-New York Fund Asset Management Division (the ''Investment Sub-Adviser,'' and together with Excelsior and the Investment Adviser, each an ''Applicant,'' and collectively, the ''Applicants'').

RELEVANT ADVISERS ACT SECTIONS: Exemption requested under section 206A from section 205(a)(1).

SUMMARY OF APPLICATION: Applicants seek an order permitting Excelsior to make in-kind distributions of its portfolio securities to members of Excelsior and, in connection with these distributions, deem gains or losses on the distributed securities to be realized, for purposes of calculating the Investment Adviser's and Investment Sub-Adviser's performance compensation.

FILING DATES: The application was filed on April 26, 2002, and amended on July 8, 2002, May 6, 2003, and November 26, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the Applicants with copies of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on April 5, 2004, and should be accompanied by proof of service on 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Excelsior Venture Investors III, LLC, United States Trust Company of New York, and U.S. Trust Company N.A., 114 West 47th Street, New York, New York 10036.

FOR FURTHER INFORMATION CONTACT: Daniel S. Kahl, Senior Counsel, or Jamey G. Basham, Special Counsel, at (202) 942–0719 (Division of Investment Management, Office of Investment Adviser Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Excelsior is a limited liability company organized under the laws of Delaware and is a business development company as defined in Section 202(a)(22) of the Advisers Act (''BDC''). Excelsior has an effective registration statement on Form N–2 on file with the SEC. The investment objective of Excelsior is to seek long-term capital appreciation by primarily investing in private domestic companies in which the equity is closely held by company founders, management or a limited number of institutional investors. Excelsior also intends to invest, to a lesser extent, in domestic and international venture capital, buyout and other private equity funds managed by third parties, negotiated private investments in public companies and foreign companies in which the equity is closely held by company founders, management or a limited number of institutional investors. The foregoing investments are referred to collectively herein as ''Direct Investments.''

2. U.S. Trust Company, N.A. Asset Management Division is a separately identified division of U.S. Trust Company, N.A., a national bank organized under the laws of the United States. U.S. Trust Company, N.A. Asset Management Division serves as Excelsior's investment adviser pursuant to an investment advisory agreement with Excelsior. U.S. Trust—New York Fund Asset Management Division is a separately identified division of United States Trust Company of New York, a state chartered bank and trust company. U.S. Trust—New York Fund Asset Management Division serves as the investment sub-adviser to Excelsior pursuant to an investment sub-advisory agreement among the Investment Sub-Adviser, the Investment Adviser and Excelsior. U.S. Trust Company, N.A. and United States Trust Company of New York are wholly-owned subsidiaries of U.S. Trust Corporation, a registered bank holding company. U.S. Trust Corporation and its subsidiaries are referred to collectively herein as ''U.S. Trust.'' [1] Under the supervision of Excelsior's board of managers (the ''Board of Managers''), the Investment Adviser and Investment Sub-Advisers are responsible for finding, evaluating, structuring and monitoring Excelsior's investments and for providing or arranging for management and administrative services for Excelsior. The Investment Adviser and the Investment Sub-Adviser are each registered as an investment adviser under the Advisers Act.

3. Pursuant to Excelsior's Limited Liability Company Operating Agreement (the ''Operating Agreement''), the business and affairs of Excelsior are managed under the direction of its Board of Managers. The Board of Managers consists of four persons and, as required by Section 56(a) of the Investment Company Act of 1940, three of the managers are not ''interested persons'' of Excelsior within the meaning of Section 2(a)(19) of such Act.

4. Excelsior's members consist of individual and institutional investors and one registered investment company which functions as a feeder fund, Excelsior Venture Investors III, LLC (the ''Feeder Fund''). Investors with accounts established at U.S. Trust hold approximately 92% of the units of membership interest in Excelsior and approximately 97% of the units in the Feeder Fund. Most other members of

[1] The Investment Adviser and Investment Sub-Adviser, as separately identified divisions, are part of the U.S. Trust Corporation subsidiaries.

Excelsior and the Feeder Fund are investors with accounts at Charles Schwab and Co., Inc., a registered broker-dealer and an affiliate of U.S. Trust Corporation. Each member of Excelsior other than the Feeder Fund met certain requirements, including that such investor's net assets were valued at $1,000,000 or more, and that the amount subscribed for did not exceed 10% of such investor's net assets. The Feeder Fund holds approximately 63.48% of the net assets of Excelsior. Each member of the Feeder Fund met certain requirements, including that such investor's net assets were valued at $500,000 or more, and that the amount subscribed for did not exceed 10% of such investor's net assets.

5. The Operating Agreement provides that items of income, gain, loss, deduction and expense of Excelsior will be determined and allocated as of the end of each tax year (typically December 31) to reflect the economic interests of its members and the Investment Adviser. Capital gains are allocated first to the Investment Adviser until the cumulative amount of all gains allocated to the Investment Adviser from the commencement of operations equals the Incentive Carried Interest calculated through the end of the period for which the allocation is being made.[2] The Investment Adviser will distribute a portion of the Incentive Carried Interest to the Investment Sub-Adviser. All remaining items of income, gain, loss, deduction and expense are allocated to Excelsior members pro rata in accordance with their capital investments.

6. The Operating Agreement provides for the distribution of all cash and other property, including an in-kind distribution of securities, received by Excelsior that the Board of Managers does not expect to use in the operation of Excelsior's business. The Investment Adviser generally will be entitled to a distribution equal to the Incentive Carried Interest. Excelsior's members generally will be entitled to all amounts remaining for distribution pro rata in accordance with their capital investments.

7. The Operating Agreement provides that (i) Any property that is distributed in kind to one or more members shall be deemed to have been sold for cash equal to its fair market value, (ii) the unrealized gain or loss inherent in such property shall be treated as recognized gain or loss for purposes of determining profits and losses, (iii) such gain or loss shall be allocated pursuant to the Operating Agreement, and (iv) such in-kind distribution shall be made after giving effect to such allocation. To date, however, no in-kind distributions have been made by Excelsior.

8. Excelsior's Board of Managers will declare an in-kind distribution when it determines that such distribution is in the best interests of Excelsior and its members. Each member will be allocated securities distributed in kind in proportion to the member's ownership interest in Excelsior. Cash will be distributed in lieu of fractional share interests.

9. Securities distributed in kind by Excelsior in conjunction with this Application will be listed on a national securities exchange or on the NASDAQ Stock Market and will not be subject to legal or contractual restrictions on their resale. These securities will be valued at the average of the closing bid and ask price, or in the case of exchange traded securities the closing price, of the five days immediately preceding the distribution. Market liquidity will be an important factor in declaring distributions and Excelsior will not distribute securities at any one time in an amount that is more than 5% of the outstanding shares of an issuer. In those relatively infrequent situations when this restriction does not permit all of Excelsior's holdings of an issuer to be distributed at one time, Applicants will closely monitor the market prior to any subsequent distribution to assure that the prior distribution is no longer significantly impacting the price of the securities. Excelsior's Board of Managers will, in acting upon each proposed distribution, consider whether a distribution of cash proceeds from a sale of securities would be of greater benefit to its members, including the Feeder Fund, than a distribution of the securities in more than one distribution, as described above.

10. At the time Excelsior's Board of Managers declares an in-kind distribution, the Feeder Fund's Board of Managers will simultaneously declare an in-kind distribution having the same record date and distribution date to its members. From the securities allocated to the Feeder Fund, Feeder Fund members will be entitled to receive shares, and cash-in-lieu of fractional share interests, in proportion to their interests in the Feeder Fund. The Feeder Fund will notify Excelsior of the number of shares to be distributed and the amount of cash-in-lieu payments to be made to each Feeder Fund member and will instruct Excelsior to make a distribution directly to Feeder Fund members as of the distribution date. The Applicants will provide notice to Excelsior and Feeder Fund members of the in-kind distribution and will facilitate obtaining members' brokerage instructions or establishing a brokerage account for the receipt of the securities distributed in kind. Any cash-in-lieu payment for fractional securities will be made within five business days of the distribution date to all Excelsior members and Feeder Fund members.

Applicants' Legal Analysis

1. Section 205(a)(1) of the Advisers Act prohibits any investment adviser, unless exempt from registration pursuant to section 203(b), from entering into a contract that provides for compensation based upon ''a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client,'' commonly referred to as a ''performance fee.''

2. Section 205(b)(3) of the Advisers Act excepts from the performance fee prohibition of section 205(a)(1) a contract between an investment adviser and a BDC that provides for compensation not in excess of ''20 per centum of the realized capital gains upon the funds of the [BDC] over a specified period or as of definite dates, computed net of all realized capital losses and unrealized capital depreciation.'' Applicants assert that section 205(b)(3) recognizes the appropriateness of a performance fee as compensation for advisers' activities in light of the special nature of BDCs.

3. Section 205(b)(3) of the Advisers Act, however, permits a performance fee only with respect to realized capital gains and does not contemplate the procedures set forth in the Operating Agreement whereby unrealized gains or losses will be deemed to be realized under certain conditions for purposes of calculating the Incentive Carried Interest. Excelsior's performance fee is prohibited by section 205(a)(1) and does not fall within the exception set out in section 205(b)(3).

4. Section 206A of the Advisers Act authorizes the SEC by order upon application to conditionally or unconditionally exempt any person or

[2] The ''Incentive Carried Interest'' is an amount equal to 20% of the excess, if any, of the cumulative amount of all capital gains realized by Excelsior on Direct Investments from the commencement of operations through the end of the period for which the allocation is being made over the sum of (x) the cumulative amount of all capital losses realized by Excelsior on all investments of any type from the commencement of operations through the end of such period; (y) the excess, if any, of the aggregate amount of unrealized capital depreciation on all investments of any type over the aggregate amount of all unrealized capital appreciation on all investments of any type determined as of the close of such period; and (z) the excess, if any, of the cumulative amount of all expenses of any type incurred by Excelsior over the cumulative amount of all income of any type earned by Excelsior, in each case from the commencement of operations through the end of such period.

transaction, or any class or classes of persons, or transactions, from any provision of the Advisers Act ''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 Advisers Act].''

5. Applicants request that the SEC grant an exemption from section 205(a)(1) of the Advisers Act to permit Excelsior to deem realized any unrealized gains or losses attributable to securities distributed in kind to its members for purposes of payment of the performance fee to the Investment Adviser and Investment Sub-Adviser.

6. Applicants assert that their exemption from section 205(a)(1) is consistent with the standards of section 206A regarding investor protection and the purposes of the Advisers Act. Applicants argue that Congress has already found it appropriate to permit a performance fee in the case of an investment adviser to a BDC. Applicants argue further that, to the extent that section 205(b)(3) of the Advisers Act requires such a fee to be based on net realized capital gains, Applicants' proposal is consistent with the statutory purposes. Once the in-kind distribution is made, Excelsior's members and the members of the Feeder Fund will have the exclusive ability to liquidate such investments and realize any gains or losses. Applicants also assert that there should be no concern over the proper valuation of the securities upon which the fee is based, because Applicants are requesting exemptive relief only with respect to in-kind distributions of securities for which a trading market exists on a national securities exchange or on the NASDAQ Stock Market.

7. Applicants state that they believe that it is in the best interests of the members of Excelsior and the members of the Feeder Fund, and in the public interest, for Excelsior to make in-kind distributions of securities. Applicants state that they believe that an in-kind distribution would enable Excelsior's members and the members of the Feeder Fund to maximize their investment. First, Applicants state that the alternative to an in-kind distribution is the sale of the securities and argue that such sales may have a negative effect on the price of the shares in the market. Second, Applicants represent that the securities to be distributed will be freely transferable and will not be subject to either legal or contractual restrictions on their sale. Moreover, Applicants represent that a distribution of securities will not constitute a taxable event with respect to Excelsior, its members, and members of the Feeder Fund, so that the members of Excelsior and the Feeder Fund will, in determining whether to hold or sell the securities, control the timing of realization of capital gains or losses. Finally, Applicants assert that as a venture capital fund, Excelsior and its advisers have not held themselves out as having experience with respect to publicly traded securities, and therefore its members do not lose any benefit of management expertise by receiving an in-kind distribution of securities.

Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. The relief will only apply to the distribution in kind by Excelsior of securities that are traded on a national securities exchange or on the NASDAQ Stock Market and are subject to no legal or contractual restriction on their sale.

2. Securities distributed in kind pursuant to the relief will be valued at the average of the closing bid and asked price (or in the case of exchange-traded securities, the closing sale price) at which the relevant securities were quoted on the relevant exchange or system during the five trading days immediately preceding the distribution. Members will receive notice of the basis for the valuation at the time of or before distribution.

3. Excelsior agrees to use all reasonable endeavors to ensure that securities that are the subject of an in-kind distribution are transferred to its members as soon as practicable following their valuation in connection with the allocation of the Incentive Carried Interest, and in any event within 30 days thereof.[3] Distributions will be recommended by Applicants, and the Board of Managers of Excelsior will approve each distribution and establish its record date, which will also be the valuation date. Prior to an in-kind distribution, members who are not account holders at U.S. Trust will be requested to provide brokerage instructions or establish an account if necessary, and procedures will be followed to assure that members who respond on a timely basis will receive the portfolio securities promptly. Members that hold accounts at U.S. Trust will receive distributions within five (5) business days of the record date.

[3] Excelsior will make the same efforts to distribute securities to members of the Feeder Fund as it does for its own members.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–6108 Filed 3–17–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [69 FR 11901, March 12, 2004]

STATUS: Closed Meeting.

PLACE: 450 Fifth Street NW., Washington, DC.

ANNOUNCEMENT OF ADDITIONAL MEETING: Additional Meeting.

A Closed Meeting will be held on Monday, March 15, 2004 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matter may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (3), (5), (7) (9), and (10) and 17 CFR 200.402(a) (3), (5), (7), (9), and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the item listed for the closed meeting in a closed session and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting to be held on Monday, March 15, 2004 will be: an investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: March 15, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–6254 Filed 3–1–04; 3:56 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49408; File No. S7–10–04]

Regulation NMS

AGENCY: Securities and Exchange Commission.

ACTION: Notice of hearings.

SUMMARY: On February 26, 2004, the Securities and Exchange Commission (the ''Commission'') approved for publication proposed Regulation NMS (the ''Proposing Release''), which is designed to enhance and modernize the regulatory structure of the U.S. equity markets (Securities Exchange Act Release No. 34–49325). In connection with the Proposing Release, the Commission will hold public hearings to give the Commission the benefit of the views of interested members of the public regarding the issues raised and questions posed in the Proposing Release.

DATES: The initial public hearing will be held on April 1, 2004 in Washington, DC. A subsequent public hearing will be held on April 21, 2004 in New York, New York. The following information pertains to both hearings. The hearings will begin at 9 a.m. Both hearings will be broadcast live and access will be available via webcast on the Commission's Web site at *http://www.sec.gov*. Persons who wish to testify at either hearing must submit a written request to the Commission specifying the date on which they prefer to testify and, if they are flexible as to either date, to specify so in their request. The Commission must receive these requests on or before March 22, 2004. Persons requesting to testify must also submit three copies of their oral statements or a summary of their intended testimony to the Commission. The Commission must receive these submissions on or before March 26, 2004. Those who do not wish to appear at the hearings may submit written testimony on or before the end of the comment period for the Proposing Release, which is 75 days after publication of the Proposing Release in the **Federal Register** (May 24, 2004), for inclusion in the public comment file.

ADDRESSES: The April 1, 2004 hearing will be held in the William O. Douglas Room of the Commission's headquarters at 450 Fifth Street, NW., Washington, DC 20549. The April 21, 2004 hearing will be held at the InterContinental The Barclay New York at 111 East 48th Street, New York, NY 10017. Persons submitting requests to appear or written testimony in lieu of testifying should file three copies of the request or testimony with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20459–0609. Persons requesting to appear should also submit three copies of their oral statement or summary of their testimony to the same address. Requests to appear and copies of oral statements or summaries of intended testimony may be filed electronically at the following e-mail address: *rule-comments@sec.gov*. The words ''Request to Testify'' should be clearly noted on the subject line of the request. All requests and other submissions also should refer to File No. S7–10–04. Copies of all requests and other submissions and transcripts of the hearings will be available for public inspection and copying in the Commission's Public Reference Room at 450 Fifth Street, NW., Washington, DC 20549. All submitted requests and other materials will be posted on the Commission's Internet Web site (*http://www.sec.gov*). We do not edit personal information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Sapna C. Patel, Special Counsel, Office of Market Supervision, Division of Market Regulation, at (202) 942–0166, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTAL INFORMATION:

I. Summary of Rule Proposals

The public hearings concern the Commission's proposed Regulation NMS. As more fully described in the Proposing Release [1] (available on the Commission's Web site at *http://www.sec.gov/rules/proposed/34–49325.htm*), Regulation NMS would incorporate four substantive proposals that are designed to enhance and modernize the regulatory structure of the U.S. equity markets. First, the Commission has proposed a uniform rule for all national market system (''NMS'') market centers that, subject to certain exceptions, would require a market center to establish, maintain, and enforce policies and procedures reasonably designed to prevent ''trade-throughs''—the execution of an order in its market at a price that is inferior to a price displayed in another market. Second, the Commission has proposed a market access rule that would modernize the terms of access to quotations and execution of orders in the NMS. The third proposal would prohibit market participants from accepting, ranking, or displaying orders, quotes, or indications of interest in a pricing increment finer than a penny, except for securities with a share price of below $1.00. Finally, the Commission has proposed amendments to the rules and joint industry plans for disseminating market information to the public that, among other things, would modify the formulas for allocating plan net income to reward markets for more broadly based contributions to public price discovery. The Commission also has proposed to redesignate the NMS rules adopted under Section 11A of the Securities Exchange Act of 1934 as Regulation NMS. The Commission will consider the hearing record in connection with its rulemaking proposals.

[1] Securities Exchange Act Release No. 49325 (February 26, 2004), 69 FR 11126 (March 9, 2004).

II. Procedures for Hearing

The Commission will publish a schedule of appearances for the April 1st hearing on or about March 26, 2004 and for the April 21st hearing on or about April 12, 2004. Based on the number of requests received, the Commission may not be able to accommodate all requests. The Commission may limit the time for formal presentations or group presentations into a series of panels. Time will be reserved for members of the Commission and Commission staff to pose questions to each witness concerning his or her testimony as well as other matters pertaining to the Proposing Release. The Commission has designated Jonathan G. Katz, Secretary of the Commission, as the hearing officer.

Dated: March 12, 2004.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–6070 Filed 3–17–04; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of World Information Technology, Inc.; Order of Suspension of Trading

March 16, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of World Information Technology, Inc. (the ''Company''), trading under the stock symbol WRLT. Questions have been raised regarding: (i) The accuracy and completeness of information about the Company in filings with the Commission and in press releases concerning, among other things, the Company's financial condition, the Company's funding arrangements, and the resignations of the Company's former auditor and Chairman; and (ii)

transactions in the Company's securities by certain individuals associated with the Company.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, March 16, 2004, through 11:59 p.m. EST, on March 29, 2004.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–6186 Filed 3–16–04; 11:58 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49411; File No. SR–CBOE–2004–17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Establishing a Process for Approving Remote Electronic Designated Primary Market-Makers

March 12, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 11, 2004, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the CBOE. On March 11, 2004, the CBOE 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 CBOE proposes to adopt new rules establishing a process for approving remote electronic Designated Primary Market-Makers (''e-DPMs'').

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized.*

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 8.92 Electronic DPM Program

(a) [Reserved]

(b) Approval to Act as an e-DPM. Determinations regarding granting or withdrawing approval to act as an e-DPM shall be made by the Board of Directors or a committee designated by the Board of Directors. A member organization desiring to be approved to act as an e-DPM shall file an application with the Exchange on such form or forms as the Exchange may prescribe. The Exchange shall determine the appropriate number of approved e-DPMs per option class. Factors to be considered in approving an e-DPM may include any one or more of the following:

(i) adequacy of resources including capital, technology, and personnel;

(ii) history of stability, superior electronic capacity, and superior operational capacity;

(iii) market-making and/or specialist experience in a broad array of securities;

(iv) ability to interact with order flow in all types of markets;

(v) existence of order flow commitments;

(vi) willingness to accept allocations as an e-DPM in options underlying at least 400 securities; and

(vii) willingness and ability to make competitive markets on the Exchange and otherwise to promote the Exchange in a manner that is likely to enhance the ability of the Exchange to compete successfully for order flow in the options it trades.

In selecting an applicant for approval as an e-DPM, the Exchange may place one or more conditions on the approval concerning the operations of the applicant and the number of option classes which may be allocated to the applicant. Each e-DPM shall retain its approval to act as an e-DPM until the Exchange relieves the e-DPM of its approval and obligations to act as an e-DPM or the Exchange terminates the e-DPM's approval to act as an e-DPM pursuant to Exchange Rules. An e-DPM may not transfer its approval to act as an e-DPM unless approved by the Exchange.

(c)–(e) [reserved]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The CBOE 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

During 2004, CBOE will propose significant enhancements to its Hybrid Trading System. Among those will be the addition of a proposed new category of CBOE market making participants—e-DPMs. e-DPMS, if approved by the Commission, will be member organizations appointed to operate on CBOE as competing DPMs in a broad number of option classes. Rules governing e-DPMs' trading procedures and obligations are being submitted to the Commission as part of a separate rule filing. The purpose of this filing is to establish rules and criteria to allow CBOE to appoint e-DPMs. Any such appointments would be contingent on Commission approval of CBOE rules governing e-DPM trading procedures and obligations.

The CBOE expects to approve/appoint a limited number of e-DPMs. The Exchange's Board of Directors has established a special appointments committee to select the firms that would be designated as e-DPMs, and to make initial e-DPM option class allocations. The committee consists of the Lessor Director, two Public Directors, the Vice Chairman, and the President. Candidates seeking appointment as an e-DPM will be evaluated on the basis of how well they meet the following criteria:

- Significant market-making and/or specialist experience in a broad array of securities;
- Superior resources, including capital, technology and personnel;
- Demonstrated history of stability, superior electronic capacity, and superior operational capacity;
- Proven ability to interact with order flow in all types of markets;
- Existence of order flow commitments;

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces and supercedes the CBOE's original 19b–4 filing in its entirety.

• Willingness to accept allocations as an e-DPM in options overlying 400 or more securities; and

• Willingness and ability to make competitive markets on CBOE and otherwise to promote CBOE in a manner that is likely to enhance the ability of CBOE to compete successfully for order flow in the options it trades.

The purpose of the final factor listed above is to permit the Exchange to take into consideration in the selection process which of the applicants will best be able to enhance the competitiveness of the Exchange. ''Willingness to promote CBOE'' includes assisting in meeting and educating market participants, maintaining communications with member firms in order to be responsive to suggestions and complaints, responding to suggestions and complaints, and other like activities. Further, this factor will not be applied by the Exchange to restrict, directly or indirectly, e-DPMs' activities as a market maker or specialist elsewhere, or to restrict how e-DPMs handle orders held by them in a fiduciary capacity to which they owe a duty of best execution.

The factor relating to the existence of order flow commitments would be used to evaluate existing order flow commitments between the applicant and order flow providers. A future change to, or termination of, any such commitments considered by the Exchange during the review process could not be used by the Exchange at any point in the future to terminate or take remedial action against an e-DPM. Further, the Exchange could not take remedial action solely because orders are not subsequently routed to the Exchange but elsewhere pursuant to any such commitments. Whether actual commitments result in orders being routed to the Exchange is a separate matter from the criteria for which an e-DPM's performance would be evaluated.

The proposed rules also provide that (i) as part of the approval of an e-DPM, the Exchange may place conditions on the approval based on the operations of the applicant and the number of option classes which may be allocated to the applicant; (ii) each e-DPM shall retain its approval unless such approval is removed by the Exchange pursuant to appropriate rules; and (iii) an e-DPM may not transfer its approval to act as an e-DPM unless allowed by the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act [4] in general and furthers the objectives of sections 6(b)(5) [5] of the Act in particular in that it serves to remove impediments to and perfect the mechanism of a free and open market because it will help the Exchange manage its proposed initial launch of e-DPM trading.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–CBOE–2004–17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2004–17 and should be submitted by April 8, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–6107 Filed 3–17–04; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49406; File No. SR–NASD–2003–173]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc., Through Its subsidiary, The Nasdaq Stock Market, Inc., Relating to the Nasdaq Closing Cross

March 11, 2004.

I. Introduction

On November 25, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a Nasdaq closing cross for certain Nasdaq national market securities (''Nasdaq Closing Cross'').

The proposed rule change was published for comment in the **Federal Register** on December 11, 2003.[3] The Commission received two comment letters on the proposal.[4] Nasdaq

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48878 (December 4, 2003), 68 FR 69098.

[4] *See* letter from Kim Bang, Bloomberg Tradebook LLC, to Jonathan G. Katz, Secretary, Commission, Continued

submitted two letters responding to the comment letters.[5] On February 11, 2004, Nasdaq amended the proposed rule change.[6] On March 4, 2004, Nasdaq again amended the proposed rule change.[7] This order approves the proposed rule change, as amended by Amendment Nos. 1 and 2.

II. Description of Proposed Rule Change

The proposed rule change would establish the Nasdaq Closing Cross for certain Nasdaq national market securities. There would be three components of the Nasdaq Closing Cross: (1) The creation of on close and imbalance only order types; (2) the dissemination of an order imbalance indicator via electronic means; and (3) closing cross processing in SuperMontage at 4:00:00 that would execute the maximum number of shares at a single, representative price that would be the Nasdaq Official Closing Price.

III. Comment Summary

The Bloomberg Letter raised an objection on several grounds to the requirement that trading interest be subject to automatic execution in order to take part in the Nasdaq Closing Cross. The Bloomberg Letter opined that, because the Nasdaq Closing Cross would exclude trades, and therefore liquidity, in Nasdaq securities that occur on electronic communications networks that have elected order delivery rather than auto-execution, the closing price would likely be inaccurate, incomplete and misleading. The Bloomberg Letter commented further that the proposed rule change would violate Section 15A(b)(6) of the Act[8] which requires that the rules of a national securities association not be designed to permit unfair discrimination between customers, issuers, brokers or dealers. Finally, the Bloomberg Letter stated that the proposed rule change would constitute a constructive denial of access to ECNs, which would constitute, in turn, an unnecessary or inappropriate burden on competition in violation of Section 15A(b)(8) of the Act.[9]

The Amex Letter's primary comment was that the Nasdaq Closing Cross would provide Nasdaq officials with too much discretion and that the adjustment process for the ''circuit breaker'' amounts would allow for too much subjectivity. Specifically, the Amex Letter objected to: (1) The fact that, in its opinion, a crossing price could be selected in a manner that does not reflect true market forces; (2) the potential it sees for manipulation of the crossing price determination; and (3) the potential it sees for the crossing price determination to be influenced by certain Nasdaq member firms who may intervene for their own interests. The Amex Letter stated further that the ''circuit breaker'' procedures, including the benchmark values of the VWAP and the VWAI, were subjective and confusing.

In its response letters, Nasdaq spoke to the comments raised in the Bloomberg Letter, stating that Bloomberg's business decision to execute orders internally within Bloomberg's book rather than offering automatic execution on SuperMontage should not impede Nasdaq from proceeding with a market enhancement. Nasdaq suggested that there are multiple options that Bloomberg could pursue to satisfy its customers' interest in participating fully in the Nasdaq Closing Cross, such as (1) by participating in the Closing Cross on an automatic execution basis; (2) by routing standing limit orders through another participant that participates on an automatic execution basis, or (3) by discussing with Nasdaq the possibility of establishing a second market participant identifier for the entry of orders eligible to participate in the Closing Cross. Moreover, Nasdaq stated that the Closing Cross is inherently a ''match'' ''matching interest of buyers and sellers at a single instant in time ''and is not conducive to an iterative order delivery process, which would create substantial technical difficulties for Nasdaq and unwarranted risk for other market participants.

Nasdaq's response letters also spoke to the concerns raised in the Amex Letter with respect to subjectivity, discretion of Nasdaq officials, and the circuit breaker. Nasdaq stated that the Closing Cross is designed to avoid ever triggering the circuit breaker and that the circuit breaker is intended as a prophylactic measure to protect investors. Nasdaq stated that the threshold percentage for the circuit breaker would be established well in advance and would be modified only in rare instances, such as index adjustments and options expirations. Moreover, rather than being subjective, the Closing Cross algorithm, including the threshold comparison, would be completely automated and closely tied to market values at the close of the trading day. In addition, in response to industry feedback, including the Amex Letter, Nasdaq amended the proposed rule change to establish the VWAP as the exclusive benchmark for determination of the threshold percentage, rather than rely on both the VWAP and the VWAI as initially proposed.

IV. Discussion and Commission's Findings

After careful consideration of the proposed rule change, the comment letters, and Nasdaq's responses to the comment letters, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[10] The Commission believes that the proposed rule change is consistent with Section 15A(b) of the Act,[11] in general, and furthers the objectives of Section 15A(b)(6),[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in

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dated January 6, 2003 (sic) (''Bloomberg Letter''); and letter from Michael Ryan, Executive Vice President and General Counsel, American Stock Exchange, to Jonathan G. Katz, Secretary, Commission, dated January 6, 2004 (''Amex Letter'').

[5] *See* letter from Jeffrey S. Davis, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated January 23, 2004; and letter from Edward S. Knight, Executive Vice President, Nasdaq, to The Honorable William H. Donaldson, Chairman, Commission, dated February 10, 2004.

[6] *See* letter from Jeffrey S. Davis, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated February 11, 2004 (''Amendment No. 1''). In Amendment No. 1, Nasdaq revised the proposed rule change to amend the ''circuit breaker'' for the Closing Cross to establish the Volume Weighted Average Price (''VWAP'') as the exclusive benchmark for determination of the threshold percentage, rather than rely on both the VWAP and the Volume Weighted Average NASDAQ Inside (''VWAI''), as initially proposed. This was a technical amendment and is not subject to notice and comment.

[7] *See* letter from Jeffrey S. Davis, Nasdaq, to Katherine England, Assistant Director, Division, Commission, dated March 4, 2004 (''Amendment No. 2''). In Amendment No. 2, Nasdaq revised the text of the proposed rule change to make certain clarifying and technical changes. This was a technical amendment and is not subject to notice and comment. The language of the proposed rule change is attached as Exhibit A.

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 15 U.S.C. 78*o*–3(b)(8).

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78*o*–3(b).

[12] 15 U.S.C. 78*o*–3(b)(6).

general, to protect investors and the public interest.

The Commission believes that Nasdaq has adequately addressed the comments raised in the comment letters. The Commission also believes that the proposed rule change may provide useful information to market participants and may minimize price volatility on the close. In addition, the Commission believes that the proposed rule change may result in the public dissemination of information that more accurately reflects the trading in a particular security at the close.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities association, and, in particular, Section 15A(b) of the Act.[13]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR—NASD–2003–173) as amended by Amendment Nos. 1 and 2 is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

Proposed new language is in *italics.*

Rule 4709 Nasdaq Closing Cross

(a) Definitions. For the purposes of this rule the term:

(1) *''Imbalance'' shall mean the number of shares of buy or sell MOC or LOC orders that cannot be matched with other MOC or LOC or IO order shares at a particular price at any given time.*

(2) *''Imbalance Only Order'' or ''IO'' shall mean an order to buy or sell at a specified price or better that may be executed only during the Nasdaq Closing Cross and only against MOC or LOC orders. IO orders can be entered between 9:30:01 a.m. and 3:59:59 p.m., but they cannot be cancelled or modified after 3:50:00 except to increase the number of shares or to increase (decrease) the buy (sell) limit price. IO sell (buy) orders will only execute at or above (below) the 4:00:00 SuperMontage offer (bid). All IO orders must be available for automatic execution.*

(3) *''Limit On Close Order'' or ''LOC'' shall mean an order to buy or sell at a specified price or better that is to be executed only during the Nasdaq Closing Cross. LOC orders can be entered, cancelled, and corrected between 9:30:01 a.m. and 3:50:00 p.m. and will execute only at the price determined by the Nasdaq Closing Cross. All LOC orders must be available for automatic execution.*

(4) *''Market on Close Order'' shall mean an order to buy or sell at the market that is to be executed only during the Nasdaq Closing Cross. MOC orders can be entered, cancelled, and corrected between 9:30:01 a.m. and 3:50:00 p.m. and will execute only at the price determined by the Nasdaq Closing Cross. All MOC orders must be available for automatic execution.*

(5) *''Nasdaq Closing Cross'' shall mean the process for determining the price at which orders shall be executed at the close and for executing those orders.*

(6) *''Order Imbalance Indicator'' shall mean a message disseminated by electronic means containing information about MOC, LOC, and IO orders and the price at which those orders would execute at the time of dissemination.*

(b) Order Imbalance Indicator. Beginning at 3:50 p.m., Nasdaq shall disseminate by electronic means an Order Imbalance Indicator every 30 seconds until 3:55, and then every 15 seconds until 3:58, and then every 5 seconds until 3:59, and then every second until market close. The Order Imbalance Indicator shall contain the following real time information:

(1) *The number of shares represented by MOC, LOC, and IO orders that are paired at a single price that is at or within the current SuperMontage inside.*

(2) *The size of any Imbalance;*

(3) *The buy/sell direction of any Imbalance; and*

(4) *Indicative prices at which the Nasdaq Closing Cross would occur if the Nasdaq Closing Cross were to occur at that time and the percent by which the indicative prices are outside the then current SuperMontage best bid or best offer, whichever is closer. The indicative prices will be:*

(A) The price at which the MOC, LOC, and IO orders in the Nasdaq Closing Book would execute, and

(B) The price at which both the MOC, LOC, and IO orders and all executable orders in SuperMontage (excluding volume that is available only by order delivery) would execute.

(C) If no price satisfies subparagraph (A) or (A) and (B) above, Nasdaq will disseminate the phrase ''market buy'' or ''market sell''.

(c) Processing of Nasdaq Closing Cross.

(1) *The Nasdaq Closing Cross will begin at 4:00:00, and after hours trading will commence when the Nasdaq Closing Cross concludes.*

(2) *The Nasdaq Closing Cross will occur at the price that*

(A) Maximizes the number of shares executed. *If more than one such price exists, the Nasdaq Closing Cross shall occur at the price that:*

(B) Minimizes any Imbalance. If more than one such price exists, the Nasdaq Closing Cross shall occur at the price that:

(C) Minimizes the distance from the 4:00:00 SuperMontage bid-ask midpoint.

(D) If the Nasdaq Closing Cross price established by subparagraphs (A) through (C) above is outside the benchmarks established by Nasdaq by a threshold amount, the Nasdaq Closing Cross will occur at a price within the threshold amounts that best satisfies the conditions of subparagraphs (A) through (C) above. Nasdaq management shall set and modify such benchmarks and thresholds from time to time upon prior notice to market participants.

(3) *If the Nasdaq Closing Cross price is selected and fewer than all MOC, LOC and IO orders and fewer than all continuous orders that are available for automatic execution in SuperMontage would be executed, orders will be executed at the Nasdaq Closing Cross price in the following priority:*

(A) MOC orders, with time as the secondary priority;

(B) LOC orders, limit orders, IO orders, displayed quotes and reserve interest priced more aggressively than the Nasdaq Closing Cross price;

(C) LOC orders, IO Orders displayed interest of limit orders, and displayed interest of quotes at the Nasdaq Closing Cross price with time as the secondary priority;

(D) Reserve interest at the Nasdaq Closing Cross price with time as the secondary priority; and

(E) Unexecuted MOC, LOC, and IO orders will be canceled.

(4) *All orders executed in the Nasdaq Closing Cross will be executed at the Nasdaq Closing Cross price, trade reported with SIZE as the contra party, and disseminated via the consolidated tape. The Nasdaq Closing Cross price will be the Nasdaq Official Closing Price for stocks that participate in the Nasdaq Closing Cross.*

[FR Doc. 04–6068 Filed 3–17–04; 8:45 am]

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[13] 15 U.S.C. 78*o*–3(b).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49413; File No. SR–NASD–2003–175]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Repeal Rule 4613A(e)(1) Requiring Same-Priced Quotations on Multiple Markets

March 12, 2004.

I. Introduction

On November 26, 2003, the National Association of Securities Dealers, Inc. (''NASD''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] to repeal NASD Rule 4613A(e)(1), which requires NASD members that display priced quotations for a Nasdaq security in two or more market centers to display the same priced quotations for that security in each market center. The proposed rule change was published for comment in the **Federal Register** on February 5, 2004.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description

Currently, NASD Rule 4613A(e)(1) requires NASD members that display priced quotations for a Nasdaq security in two or more market centers to display the same priced quotations for that security in each market center. In the instant proposal, the NASD proposes to repeal NASD Rule 4613A(e)(1), so that NASD members that choose to display quotations for a Nasdaq security in multiple market centers are permitted to display different priced quotations for a particular security in two or more market centers.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[4] Specifically, the Commission believes that the proposed rule change is consistent with the provisions of sections 15A(b)(6) and 15A(b)(9) of the Act.[5] Section 15A(b)(6) requires, among other things, that rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market; and, in general, to protect investors and the public interest. Section 15A(b)(9) requires that the rules of the association not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The NASD originally proposed NASD Rule 4613A(e)(1) as part of the Alternative Display Facility (''ADF'') pilot rules,[6] in order to prevent the fragmentation of quotations by an NASD member (which might serve to undermine the transparency of the best quotes in the market), given the increased potential that NASD members might choose to dual quote on several market centers, including ADF.

The Commission notes that NASD Rule 4613A(e)(1) is the only ADF rule that applies to all markets.[7] The Commission believes that, as an intra-market rule, NASD Rule 4613A(e)(1) may make sense because displaying different priced quotations for the same security in the same market may be confusing and misleading to other market participants and public investors. However, as an inter-market rule, NASD Rule 4613A(e)(1) may have undesirable or unintended consequences given recent market structure developments. For example, an NASD member now may have several completely distinct business units, such as a market making unit and an electronic communications network (''ECN''), which are used by different types of clients and, therefore, represent separate pools of liquidity. An NASD member may choose to display quotations relating to its market-making unit on Nasdaq and its ECN on ADF. Under such circumstances, compliance with NASD Rule 4613A(e)(1) may, in effect, require the NASD member to consolidate these distinct business units for purposes of displaying quotations on each market, which may be contrary to the business model of the firm since these quotes represent separate liquidity pools. According to the NASD, an NASD member could establish separate broker/dealers for each business unit in order to comply with NASD Rule 4613A(e)(1), but this may be burdensome and may interfere with competition. After analyzing NASD Rule 4613A(e)(1) and its effects, including the difficulty of enforcing the rule across market centers, the Commission agrees that repealing NASD Rule 4613A(e)(1) is consistent with the Act.

The Commission also notes that the NASD has represented that it will continue to monitor and surveil for any potentially collusive or manipulative conduct relating to quotation activity on markets under its regulatory authority. Nothing in this rule change would modify any other responsibility of a broker or dealer under the Act, including Rule 11Ac1–1 under the Act[8] and all other rules and regulations of the NASD.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NASD–2003–175) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–6101 Filed 3–17–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49399; File No. SR–NASD–2003–199]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Listing Fee Waivers

March 11, 2004.

On December 29, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to retroactive listing fee

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49152 (January 29, 2004); 69 FR 5632.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78*o*–3(b)(6) and (b)(9).

[6] Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002). Subsequent to the initial approval of the ADF rules, the Commission approved an extension of the pilot until January 26, 2004. Securities Exchange Act Release No. 47633 (April 10, 2003), 68 FR 19043 (April 17, 2003).

[7] *See id.*

[8] 17 CFR 240.11Ac1–1.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

waivers. Specifically, the proposal would allow a Nasdaq issuer that completed a merger with another Nasdaq issuer during the first 90 days of 2003 to apply for and receive a waiver for 75% of the annual fees assessed to the acquired Nasdaq issuer.[3] The proposed rule change was published for comment in the **Federal Register** on February 5, 2004.[4] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[5] and, in particular, the requirements of section 15A of the Act[6] and the rules and regulations thereunder. The Commission finds specifically that the proposal is consistent with the requirements of section 15A(b)(5) of the Act,[7] because it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that NASD operates or controls. Nasdaq has represented that it is proposing to take this action because it believes that is equitable to provide a partial credit for annual listing fees in order to avoid the assessment of two fees where a merger has occurred within the first 90 days of a given billing year. Further, Nasdaq has already implemented the same fee waiver on a going-forward basis.[8] The Commission believes that the proposed fee waiver should assist in reducing costs incurred by Nasdaq issuers that completed a merger with another Nasdaq issuer during the first 90 days of 2003.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[9], that the proposed rule change (File No. SR–NASD–2003–199) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–6105 Filed 3–17–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49402; File No. SR–NYSE–99–12]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendments No. 1 and 2 To Amend Exchange Rule 350 (''Compensation or Gratuities to Employees of Others'')

March 11, 2004.

On March 26, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 350 (''Compensation or Gratuities to Employees of Others''). On February 5, 2003, The Exchange filed Amendment No. 1 to the proposed rule change.[3] On December 17, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.[4]

The proposed rule change was published for comment in the **Federal Register** on January 23, 2004.[5] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[6] and, in particular, the requirements of section 6 of the Act[7] and the rules and regulations thereunder. In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5)[8] of the Act because by eliminating the requirement for the NYSE to approve compensation arrangements that have already been approved by a member or member organization that must supervise its employees, and clarifying the requirement to register when a floor employee receives more than $200 a year from a member or member organization, the proposed rule should permit the NYSE to better allocate its resources, enabling the Exchange to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NYSE–99–12), including Amendment No. 1 and Amendment No. 2 be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–6102 Filed 3–17–04; 8:45 am]

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[3] The Commission notes that Nasdaq also submitted a separate proposed rule change, pursuant to section 19b(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A), to apply the same listing fee waiver on a going-forward basis. *See* Securities Exchange Act Release No. 49133 (January 28, 2004), 69 FR 5630 (February 5, 2004) (File No. SR–NASD–2003–198).

[4] *See* Securities Exchange Act Release No. 49134 (January 28, 2004), 69 FR 5631.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(5).

[8] *See supra* note 3.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated February 3, 2003 (''Amendment No. 1'').

[4] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division, Commission, dated December 16, 2004 (''Amendment No. 2'').

[5] *See* Securities Exchange Act Release No. 49093 (January 16, 2004), 69 FR 03418. The proposal eliminates the requirement in Rule 350 that the NYSE approve certain compensation arrangements involving floor employees. It also codifies the requirement that a floor employee who receives more than $200 per year for his services be employed by and registered with the member or member organization that provides the compensation.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(6).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49391; File No. SR–NYSE–2003–42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. To Amend Its Rules 13, 72, 76 and 91 To Establish a Six-Month Pilot Program in Selected Stocks To Provide That Institutional XPress® Orders Be Executed Immediately Against an Institutional XPress® Eligible NYSE LiquidityQuote℠ Bid or Offer and Not Be Exposed for Price Improvement

March 10, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 16, 2003, the New York Stock Exchange, Inc. (''NYSE'' 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 February 20, 2004, the Exchange amended 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 NYSE is proposing to amend NYSE Rules 13, 72, 76 and 91 to establish a six-month pilot program in selected stocks to provide that Institutional XPress® orders be executed immediately against an Institutional XPress® eligible NYSE LiquidityQuote℠ bid or offer and not be exposed for price improvement. Below is the text of the proposed rule change, as amended. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Definitions of Orders

Rule 13

* * * * *

XPress Order

An order to buy or sell a security for no less than such number of shares as the Exchange shall from time to time determine and no more than the displayed size of an XPress quote, as defined below, which order is to be executed [in whole or in part at the price of the XPress quote, if available, or at a better price if obtainable.] *(i) in the case of an execution at the best bid or offer, or in the case of an execution at a liquidity bid or offer in a stock not part of the pilot program specified in (ii), in whole or in part at the price of an XPress-eligible bid or offer, if available, or at a better price, if obtainable; or (ii) in the case of an execution at a liquidity bid or offer, at the price of such XPress-eligible liquidity bid or offer pursuant to a pilot program in such stocks as the Exchange shall make known to its membership.* The portion not so executed shall be treated as cancelled.

An XPress quote is a quote so indicated by the Exchange. In order to be indicated as an XPress quote, a published bid or offer must be at the same price, for no less than the number of shares and the minimum period of time that the Exchange shall from time to time determine. If the XPress bid or offer price changes or the published bid or offer size is less than such number of shares, the bid or offer shall no longer be indicated as an XPress quote. (*See* also Rule 72.50.)

The Exchange shall make known to its membership the minimum size for XPress orders and the minimum size and time requirements for XPress quotes.

XPress orders may be entered up to 3:58 p.m. or up until two minutes prior to any other closing time on the Exchange.

* * * * *

Priority and Precedence of Bids and Offers

Rule 72

* * * * *

.50 XPress Orders.—An execution of an XPress order, in whole or in part, shall not remove bids or offers from the Floor. Once an XPress order has been represented in the Crowd, no part of the XPress bid or offer against which the XPress order is to be executed shall be withdrawn, except to provide price improvement to all or part of the XPress order. When an XPress order has been executed in part at an improved price, the remainder of such order shall be executed at the XPress bid or offer up to the number of shares then available, regardless of whether such number is less than the minimum size for an XPress quote. All XPress orders shall be executed in strict time priority with respect to each other. A member who is providing a better price to an XPress order must trade with all other market interest having priority at that price before trading with the XPress order. *This rule shall not apply in the case of an XPress order received by the specialist seeking to trade against an XPress-eligible liquidity bid or offer pursuant to a pilot program in such stocks as the Exchange shall make known to its membership.*

* * * * *

''Crossing'' Orders

Rule 76

When a member has an order to buy and an order to sell the same security, he shall, except for bonds traded through ABS® publicly offer such security at a price which is higher than his bid by the minimum variation permitted in such security before making a transaction with himself. All such bids and offers shall be clearly announced to the trading crowd before the member may proceed with the proposed ''cross'' transaction.

This rule shall not apply in the case of an XPress order received by the specialist seeking to trade against an XPress-eligible liquidity bid or offer pursuant to a pilot program in such stocks as the Exchange shall make known to its membership.

* * * * *

Taking or Supplying Securities Named in Order

Rule 91

* * * * *

Supplementary Material:

.10–.50. No Change.

.60 XPress Orders.—The provisions of this Rule shall not apply in the case of an XPress order received by the specialist seeking to trade against an XPress-eligible liquidity bid or offer containing any specialist proprietary interest, pursuant to a pilot program in such stocks as the Exchange shall make known to its membership.

* * * * *

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

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated February 19, 2004 (''Amendment No. 1''). In Amendment No. 1, the Exchange provided additional discussion on the size requirements for XPress® orders to trade with a LiquidityQuote℠ bid or offer, removed the last sentence of the proposed language in NYSE Rule 91.50, and renumbered the language proposed in NYSE Rule 91.50 to NYSE Rule 91.60.

concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's Institutional XPress® (''XPress'') rules provide that XPress orders are entitled to trade against an XPress eligible bid or offer without interference, and must be exposed for price improvement. The current criteria for determining when a bid or offer is Institutional XPress eligible are: (i) With respect to the best bid or offer, the share size must be for at least 15,000 shares, and have been published for at least 15 seconds; and (ii) with respect to a NYSE LiquidityQuote℠ bid or offer,[4] such bid or offer must have been published at the same price for at least 15 seconds.

An XPress order seeking to trade against an XPress eligible best bid or offer must be for at least 15,000 shares. An XPress order seeking to trade against an XPress eligible NYSE LiquidityQuote℠ (''liquidity'') bid or offer must be for the size of such bid or offer.[5] Under the current rules, an XPress order must be executed in whole or in part at the price of the XPress quote, if available, or at a better price, if obtainable. The portion not so executed is canceled. The price improvement aspect of the rules applies to XPress eligible best bids and offers and XPress eligible liquidity bids or offers.

According to the Exchange, there is a perceived difficulty with the current rules that may disincent entry of large limit orders which might be reflected in the published quotation as XPress eligible liquidity bids or offers. Concerns have been expressed to the Exchange that such orders would attract contra side XPress orders, which would not otherwise enter the market, and that these XPress orders may then receive price improvement. The Exchange believes that this results in liquidity-attracting XPress eligible limit orders remaining unexecuted, and possibly having to be re-entered at a worse price in order to be filled. Accordingly, the Exchange believes that such an outcome may undercut the viability of the XPress initiative to the community of investors that the Exchange seeks to attract.

In order to address these concerns, the Exchange proposes to implement a six-month pilot program in selected stocks to modify the XPress rules to eliminate the requirement that an XPress order be exposed for price improvement before trading with an XPress eligible liquidity bid or offer. The pilot stocks would include a mix of both active and moderately active stocks, as would be made known to the membership. Under this proposal, an XPress order would be executed against an available XPress eligible liquidity bid or offer without being exposed for price improvement. Members who wish to participate in executions in these pilot stocks when an XPress eligible liquidity bid or offer is published could do so by bidding or offering at higher (lower) prices prior to the specialist's receipt of an XPress order. Alternatively, members seeking to interact with any XPress order at the XPress eligible liquidity bid or offer price would have to first have their interest reflected in the XPress eligible liquidity published quotation.

The proposed rule change would amend the following rules: (i) NYSE Rule 13 to limit the broad reference to an XPress order receiving a better price if available, and to provide that an XPress order would be executed at the liquidity bid or offer price in the pilot stocks; (ii) NYSE Rule 72.50, which discusses how price improvement is provided to an XPress order, to reflect that it would not apply to the pilot stocks; (iii) NYSE Rule 76, which states the basic auction market crossing procedure for agency orders, to provide that it would not apply to an XPress order received by the specialist to trade against an XPress eligible liquidity bid or offer in the pilot stocks; and (iv) NYSE Rule 91, which requires crossing of an agency order before a member may trade with it as principal and contains a requirement that the customer confirm a specialist's principal transaction with the customer's order, to provide that this rule would not apply where an XPress order is executed against an XPress eligible liquidity bid or offer that includes any specialist proprietary interest in the pilot stocks.

Although the Exchange is seeking at this time the authority to institute the pilot program, the Exchange would not actually implement the pilot program until certain technological enhancements are completed that would enable floor brokers to electronically input their trading interest into the Exchange's published quotation. The Exchange would notify the Commission as to the exact commencement date of the pilot program.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of section 6(b)(5),[7] in particular, because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

[4] NYSE Liquidity Quote℠ is a real-time quote that shows the depth of market beyond the best bid or offer in the NYSE market reflecting at a single price the cumulative number of shares bid or offered on the limit order book, in the trading ''crowd'' and by the specialist as principal.

[5] In a prior filing, SR–NYSE–2002–55, the Exchange amended NYSE Rule 13.40 to provide that a NYSE LiquidityQuote℠ bid or offer, regardless of size, will be XPress eligible if it has been published for at least 15 seconds, and that the minimum number of shares for an XPress order seeking to trade with a LiquidityQuote℠ bid or offer must be for the size of such liquidity bid or offer. However, when the Exchange implemented NYSE LiquidityQuote℠, the Exchange initially required XPress orders to be for at least 15,000 shares when entered against a liquidity bid or offer. The Exchange expects that the different size requirements for XPress orders entered to trade with a liquidity bid or offer will be implemented in the near future. The Exchange represents that an Information Memo announcing the implementation will be distributed at that time. See Amendment No. 1, *supra* note 3.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

(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, 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–NYSE–2003–42. 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–NYSE–2003–42 and should be submitted by April 8, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–6103 Filed 3–17–04; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49397; File No. SR–PCX–2004–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Implementing a New Fee To Recover Costs Associated With a Royalty Fee for Trading Options on an Exchange-Traded Fund

March 11, 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 18, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The PCX has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the PCX under section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend the Trade-Related Charges portion of its Schedule of Fees and Charges (''Schedule'') in order to implement a new fee to recover costs associated with a royalty fee. The text of the proposed change to the fee schedule is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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] 15 U.S.C. 78s(b)(3)(A)(ii).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend the Trade-Related Charges portion of its Schedule in order to implement a new fee to recover costs associated with a royalty fee for trading options on an Exchange-Traded Fund (''ETF''). In December 2003, the Exchange began trading options on the NASDAQ Fidelity Composite Index (''ONEQ''), an ETF. In order to recover the costs for the associated royalty fee, the Exchange is proposing to assess a $0.12 fee per contract side to all Market Makers, Firms and Broker/Dealers. The Exchange represents that the customer side of an ONEQ transaction will not be assessed any fee. The Exchange believes that assessing this fee will provide adequate cost recovery for the royalty fee that the Exchange incurs for listing the ETF.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,[4] in general, and section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (f)(2) of Rule 19b–4[7] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

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–PCX–2004–10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2004–10 and should be submitted by April 8, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–6104 Filed 3–17–04; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49410; File No. SR–PCX–2004–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Time for Entering Orders Eligible for the Closing Auction

March 12, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 3, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly-owned subsidiary PCX Equities, Inc. (''PCXE'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the PCX. The PCX filed the proposal pursuant to Section 19(b)(3)(A) under the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend paragraph (d)(2)(B) of PCXE Rule 7.34, ''Trading Sessions,'' to permit Users to enter Market-on-Close Orders (''MOC Orders''),[6] Limit-on-Close Orders (''LOC Orders''),[7] and Limited Price Orders beginning at 6:30 a.m. (Pacific Time) rather than 4:30 a.m. (Pacific Time). The text of the proposed rule change appears below. Deletions are in brackets; additions are *italicized.*

Trading Sessions

Rule 7.34(a)–(c)—No change.
(d)Orders Permitted in Each Session.
(1)—No change.
(A)–(H)—No change.
(2) During the Core Trading Session:
(A)—No change.

(B) Users may enter Market-on-Close Orders, Limit-on-Close Orders, and Limited Price Orders beginning at [4]*6*:30 am (Pacific Time) and concluding at 1:00 pm (Pacific Time) for inclusion in the Closing Auction, except as provided in Rule 7.35(e)(2). Market-on-Close Orders and Limit-on-Close Orders are eligible for execution only during the Closing Auction. Market Orders are not eligible for execution in the Closing Auction.
(C)—No change.
(3)—No change.
(e)–(f)—No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The PCX, through its wholly-owned subsidiary PCXE, proposes to amend its rules governing the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE, to modify the time for entering Closing Auction-eligible orders. The PCX notes that the Commission recently approved a PCX proposal that established a beginning time of 4:30 a.m. (Pacific Time) for entering MOC Orders, LOC Orders, and Limited Price Orders for inclusion in ArcaEx's Closing Auction.[8] As part of its efforts to enhance ease of participation on ArcaEx, the PCX seeks to delay the beginning time for entering such orders from 4:30 a.m. (Pacific Time) to 6:30 a.m. (Pacific Time).

According to the PCX, the Core Trading Session begins at 6:30 a.m. (Pacific Time). The PCX believes that Users may be confused by the current rule because an order could be eligible for the Closing Auction at a time when the PCX is still accepting orders eligible for the Opening Auction.[9] The PCX

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The PCX has asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii).

[6] PCXE Rule 7.31(dd) defines a Market-on-Close Order as a ''Market Order that is to be executed only during the Closing Auction.''

[7] PCXE Rule 7.31(ee) defines a Limit-on-Close Order as a ''Limited Price Order that is to be executed only during the Closing Auction.''

[8] *See* Securities Exchange Act Release No. 48883 (December 4, 2003), 68 FR 69748 (December 15, 2003) (order approving File No. SR–PCX–2003–24).

[9] The PCX accepts orders eligible for the Opening Auction from 5 a.m. (Pacific Time) until 6:30 a.m.

Continued

believes that delaying the beginning time for entering Closing Auction-eligible orders to coincide with the Core Trading Session will alleviate any confusion that Users may have regarding the nature of their orders.

2. Statutory Basis

The PCX believes that the proposal is consistent with Section 6(b) of the Act,[10] in general, and Section 6(b)(5) of the Act,[11] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system and to protect investors and the public interest. In addition, the PCX believes that the proposed rule change is consistent with Section 11A(a)(1)(B) of the Act,[12] which states the Congressional finding that new data processing and communications techniques create the opportunity for more efficient and effective market operations.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The PCX neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PCX has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. As required under Rule 19b–4(f)(6)(iii), the PCX provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The PCX has requested that the Commission waive the 30-day operative delay specified in Rule 19b–4(f)(6). In this regard, the PCX states that it believes that the proposal does not raise new regulatory issues and that it will eliminate confusion regarding Closing Auctions. The PCX also believes that its request to waive the 30-day operative delay is consistent with the protection of investors and the public interest and that good cause exists, including the PCX's need to maintain competition and efficiency.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change is designed to minimize potential confusion regarding the entry of MOC Orders, LOC Orders, and Limited Price Orders for inclusion in the Closing Auction by delaying the time for entering such orders until 6:30 a.m. (Pacific Time).[15] In this regard, the Commission notes that the PCX believes that its current rule may confuse Users because it permits the entry of orders eligible for the Closing Auction at a time when the PCX is still accepting orders eligible for the Opening Auction.[16] The Commission believes that the proposal appears to be reasonably designed to help to address this concern by permitting the entry of orders eligible for the Closing Auction beginning at 6:30 a.m. (Pacific Time) rather than 4:30 a.m. (Pacific Time). For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and the Commission designates the proposal to be operative upon filing with the Commission.

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–PCX–2004–14. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 PCX. All submissions should refer to File No. SR–PCX–2004–14 and should be submitted by April 8, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–6106 Filed 3–17–04; 8:45 am]

BILLING CODE 8010–01–P

(Pacific Time). Telephone conversation between Mai Shiver, Acting Director/Senior Counsel, PCX, and Yvonne Fraticelli, Special Counsel, Division of Market Regulation, Commission, on March 11, 2004.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78k–1(a)(1)(B).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] The PCX accepts orders eligible for the Opening Auction from 5:00 a.m. (Pacific Time) until 6:30 a.m. (Pacific Time). *See* note 9, *supra.*

[17] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4637]

60-Day Notice of Proposed Information Collection: DS–2031, Shrimp Exporter's/Importer's Declaration; OMB Control Number 1405–0095

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: Extension of a currently approved collection.

Originating Office: Bureau of Oceans and International Environmental and Scientific Affairs, Office of Marine Conservation (OES/OMC).

Title of Information Collection: Shrimp Exporter's/Importer's Declaration.

Frequency: On occasion.

Form Number: DS–2031.

Respondents: Foreign shrimp exporters, foreign governments (in some cases) and U.S. importers.

Estimated Number of Respondents: 3,000 per year.

Average Hours Per Response: 10 minutes.

Total Estimated Burden: 1,666.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to James Story, Office of Marine Conservation, U.S. Department of State, 2201 C St. NW., Washington, DC 20520, who may be reached on 202–647–2335.

Dated: March 5, 2004.

David A. Balton,

Deputy Assistant Secretary for Oceans and Fisheries, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State.

[FR Doc. 04–6122 Filed 3–17–04; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 4655]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Educational Partnerships Program With Bosnia-Herzegovina and Montenegro

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the Educational Partnerships Program with Bosnia-Herzegovina and Montenegro. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to support the program goals of encouraging mutual understanding, educational reform, and civil society through cooperation in higher education in the eligible countries.

Program Overview

To encourage mutual understanding, educational reform and civil society in Bosnia-Herzegovina and Montenegro, the Educational Partnerships Program will support the cooperation of U.S. colleges and universities and non-profit organizations with designated universities in these locations to pursue objectives through exchange visits of faculty, administrators, professional experts, advanced foreign students and advanced U.S. graduate students. Applicants are strongly encouraged to discuss project ideas during the proposal development process with the relevant Bureau Program Officer for guidance. (Please *see* **FOR FURTHER INFORMATION** section for contact details.) Funding for this competition is being provided from a FY–2003 Support for Eastern European Democracy (SEED) Act transfer as carried over into FY 2004 for obligation.

Country Eligibility

Applicant organizations may submit a proposal to administer one, two, or all three of the projects listed below:

Bosnia-Herzegovina

(1) Comparative religious studies at the University of Sarajevo. This project will enable the University to establish a program of teaching about various religions, promoting inter-faith dialogue. Amount available: $200,000.

(2) American Studies in the English Department of the University of Sarajevo. This project should help increase understanding of the U.S. society, its values, and culture through the development of a program in American Studies at the University of Sarajevo. Amount available: $200,000.

Montenegro

(1) University Administration. This project will enable the University of Montenegro to explore and adapt new approaches to organizing its programs of instruction and their administration. Amount available: $150,000.

Project Design

The project should be designed to focus on specific institutional objectives that will support the Program's goals of encouraging mutual understanding, educational reform, and civil society. The design should include a series of exchange visits that will lead to the achievement of the project's objectives within a three-year period and should describe a process for evaluating the results of project implementation. The design should also provide for the effective administration of the project.

A. Statement of Need

Proposals should demonstrate an understanding of the need of the foreign university partners for the project. Proposals should explain how each participating department and institution will utilize the project to address the partner institutions' needs as well as larger needs in its country and society. If the proposed partnership would occur within the context of a previous or ongoing project, the proposal should outline distinct objectives and outcomes for the new project and should explain how Bureau funding would build upon the previously funded activities. Proposals should describe the amounts and sources of support for the earlier projects as well as the results to date.

B. Project Objectives

Proposals should explain in detail how the project will enable the participating institutions to achieve specific institutional or departmental changes that will support the goals of the Educational Partnerships Program. Proposals should outline a series of activities for meeting specific objectives for each participating institution and society. The benefits of the project to each of the participating institutions may differ significantly in nature and scope based on their respective needs

and resource bases. Proposals may outline the parameters and possible content of new courses; new teaching specializations or methodologies; new or revised curricula; and new programs for outreach to educators, professional groups, or the general public. Proposals may also describe strategies to promote administrative reform through faculty or staff development.

C. Exchange Activities and Project Implementation

Proposals should demonstrate that a project's objectives are feasible to achieve within a three-year period through a series of exchange activities that take into account prevailing conditions in the participating countries. For example, projects focusing on curricular reform should describe the existing curriculum and the courses targeted for revision, and should explain how exchange activities will result in the restructuring of the current content to incorporate the new academic themes. The proposal should describe the topics and content of any new courses or educational materials that will be developed and introduced, and should identify those persons who will be responsible for developing the new courses and for teaching them. If the project proposes to develop a new degree or certificate program, the proposal should outline the steps being taken to secure approval for the new program from the institution itself and from all relevant educational authorities. If the strategy to achieve project objectives requires intensive English language training for the proposed participants, the proposal should indicate how such training will be required and how it will be provided. The proposal should also describe the composition and size of the student population and any other group that will benefit from the innovations to be introduced through the project. Participants in the exchange visits may include teachers, researchers, advanced foreign students, advanced U.S. graduate students, and administrators from the participating institution(s). Independent consultants and other professional experts may also participate if they have the appropriate expertise. Advanced U.S. graduate students are eligible to participate only as visiting instructors at a foreign partner institution. Advanced foreign students are eligible to participate in exchange visits if they have teaching or research responsibilities or are preparing for such responsibilities. Applicants planning to submit proposals with advanced foreign students or advanced U.S. graduate students as exchange participants are encouraged to contact the program office to discuss the rationale for their participation.

Foreign participants must be both qualified to receive U.S. J–1 visas and willing to travel to the U.S. under the provisions of a J–1 visa during the exchange visits funded by this Program. Participants representing the foreign partner institutions may not be U.S. citizens.

D. Material and Technical Support for Exchange Activities

To increase the feasibility and impact of the project's exchange activities, a proposal may include a request for funding for educational materials (including books and periodical subscriptions) and technical components (including the establishment or maintenance of Internet and/or electronic mail facilities and of interactive technology-based distance-learning programs). The funding requested for educational and technical materials should supplement the project's exchange activities by reinforcing their impact on project objectives.

Proposals with distance learning components should describe pertinent course delivery methods, audiences, and technical requirements. Proposals that include the introduction of Internet, electronic mail, and other interactive technologies for long-term use in countries where these technologies are not easily maintained or financed should discuss how the foreign partner institution will cover their costs after the project ends.

Applicants may propose other project components not specifically mentioned in this solicitation document if the activities will increase the impact on project objectives.

E. Project Duration

Pending availability of funds, grants should begin on or about September 1, 2004 for a three-year period. Grant activities are expected to be completed within the three-year timeframe.

F. Project Evaluation

Proposals should describe and budget for a methodology for project evaluation. Institutions that are awarded partnership grants must formally submit periodic reports to the Bureau on the project's activities in relation to its objectives. The formal evaluation reports should include an assessment of the current status of each participating department's and institution's needs at the time of program inception with specific reference to project objectives; formative evaluation to allow for mid-course revisions in the implementation strategy; and, at the conclusion of the project, summative evaluation of the degree to which the project's objectives has been achieved. The proposal should discuss how the issues raised throughout the formative evaluation process will be assessed and addressed. The summative evaluation should describe the project's influence on the participating institutions and their surrounding communities or societies. The summative evaluation should also include recommendations about how to build upon project achievements.

Evaluative observations by external consultants with appropriate subject, cultural, and regional expertise are especially encouraged. Copies of evaluation reports must be provided to the Department of State. In addition to the formally scheduled reports, the evaluation strategy should include a mechanism for promptly providing the Bureau with information that will equip the Department of State to summarize and illustrate project activities and achievements as they occur.

G. Project Administration

Proposals should explain how project activities will be administered both in the U.S. and overseas in ways that will ensure that the project maintains a focus on its objectives while adjusting to changing conditions, assessments, and opportunities.

Institutional Commitment

The U.S. applicant organization must submit the proposal and must serve as the grant recipient with responsibility for project coordination. Proposals must include letters of commitment from all institutional partners including the institution submitting the proposal. An official who is authorized to commit institutional resources to the project must sign the letter of support. The letters of support as well as the proposal as a whole should demonstrate that the participating institutions understand one another and are committed to mutual support and cooperation in project implementation.

Eligible Institutions

The lead institution and grant recipient in the project must be an accredited U.S. college or university or other organization meeting the provisions described in IRS regulation 26 CFR 1.501(c). Applications from community colleges, institutions serving significant minority populations, undergraduate liberal arts colleges, comprehensive universities, research universities, U.S. non-profit

organizations, and combinations of these institutions are eligible. The lead U.S. organization in a consortium or other combination of cooperating institutions is responsible for submitting the application. Each application must document the lead organization's authority to represent all U.S. cooperating partners.

Budget Guidance and Cost-Sharing

The commitment of all partner institutions to the proposed project should be reflected in the cost-sharing and contributions which they offer in the context of their respective institutional capacities. Although the contributions offered by institutions with relatively few resources may be less than those offered by applicants with greater resources, all participating U.S. institutions should identify appropriate cost-share. These costs may include estimated in-kind contributions. U.S. institutions are encouraged to contribute to the international travel expenses of U.S. participants as part of their institutional cost-share. Proposed cost-sharing will be considered an important indicator of the applicant institution's commitment to the project.

The Bureau's support may be used to assist with the costs of the exchange visits as well as the costs of the administration of the project by the U.S. grantee institution, as explained in additional detail in the associated document entitled ''Project Objectives, Goals, and Implementation'' (POGI). U.S. administrative costs that may be covered by the Bureau, with certain limitations, include administrative salaries and stipends for persons employed by the U.S. grantee organization, other direct administrative costs, and indirect costs. The cost of administering the project at the foreign partner organization(s) is also eligible for the Bureau's support. Although each grant will be awarded to a single U.S. institutional partner, the proposal should make adequate provision for the administrative costs of all partner institutions, including the foreign partner(s). See the POGI for additional information on the restrictions that apply to certain budget categories. Budgets and budget notes should carefully justify the amounts requested.

The Bureau anticipates awarding up to three grants for the three projects in (an) amount(s) reflecting the amounts available for them ($200,000 for each of the two projects with Bosnia and Herzegovina and $150,000 for Montenegro). Specifically, proposals for all three projects may be for an amount not to exceed $550,000. Proposals for both projects in Bosnia-Herzegovina may be for an amount not to exceed $400,000. Proposals for one project in Bosnia-Herzegovina and for the project in Montenegro may be for an amount not to exceed $350,000. Proposals for one project only may be for an amount not to exceed the amount available for it ($200,000 for a project with Bosnia-Herzegovina, $150,000 for the project with Montenegro). Bureau guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. Therefore, organizations that cannot demonstrate at least four years of experience in conducting international exchanges are ineligible to apply under this competition.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement and Title Number

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/U–04–13.

FOR FURTHER INFORMATION CONTACT: The Humphrey Fellowships and Institutional Linkages Branch; Office of Global Educational Programs; Bureau of Educational and Cultural Affairs; ECA/A/S/U, Room 349; U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547; telephone: (202) 260–6797; fax (202) 401–1433 and Internet address *urbinama1@state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Maria A. Urbina on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

New OMB Requirement

An OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for all Federal grants or cooperative agreements on or after October 1, 2003.

The complete OMB policy directive can be referenced at *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf.*

Please also visit the ECA Web site at *http://exchanges.state.gov/education/rfgps/menu.htm* for additional information on how to comply with this new directive.

Shipment and Deadline for Proposals

Important Note: The deadline for this competition is Friday, May 28, 2004. In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.,* DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Applicants must follow all instructions in the Solicitation Package. The original and seven copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/U–04–13, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Submission of Electronic Copies

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in Microsoft word or as text (.txt) format as e-mail attachments to the following address: *urbinaMA1@state.gov.* The Bureau will provide these files electronically to the Public Affairs Section at the U.S. Embassy in Sarajevo and the Public Affairs Section of the U.S. Consulate General in Montenegro for its review.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life.

''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Grantee will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. The program office, as well as the Public Affairs Sections of the U.S. Embassies in Sarajevo and Belgrade, will review all eligible proposals, as appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

(1) *Broad and Enduring Significance of Institutional Objectives:* Program objectives should have significant and ongoing results for the participating institutions and for their surrounding societies or communities by providing a deepened understanding of critical issues in one or more of the eligible fields. Program objectives should relate clearly to institutional and societal needs, including the transition of Bosnia Herzegovina and/or Montenegro to democratic political life and civil society.

(2) *Creativity and Feasibility of Strategy to Achieve Objectives:* Strategies to achieve program objectives should be feasible and realistic within the budget and timeframe. These strategies should utilize and reinforce exchange activities creatively to ensure an efficient use of program resources.

(3) *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

(4) *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity by explaining how issues of diversity are included in objectives for all institutional partners. Issues resulting from differences of race, ethnicity, gender, religion, geography, socio-economic status, or physical challenge should be addressed during program implementation. In addition, program participants and administrators should reflect the diversity within the societies which they represent (*see* the section of this document on ''Diversity, Freedom, and Democracy Guidelines''). Proposals should also discuss how the various institutional partners approach diversity issues in their respective communities or societies.

(5) *Institution's Capacity and Record/Ability:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposals should demonstrate an institutional record of successful exchange programs, including area expertise, responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

(6) *Evaluation:* Proposals should outline a methodology for determining the degree to which the project meets its objectives, both while it is underway and at its conclusion. The final program evaluation should include an external component and should provide observations about the program's influence within the participating institutions as well as their surrounding communities or societies.

(7) *Cost-effectiveness:* Administrative and program costs should be reasonable and appropriate with cost-sharing provided by all participating institutions within the context of their respective capacities. Cost-sharing is viewed as a reflection of institutional commitment to the program.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act.

The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the

educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation. The funding authority for the program cited above is provided through the Support for East European Democracy (SEED) Act.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: March 8, 2004.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–6120 Filed 3–17–04; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4640]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9:30 a.m. on Monday, May 3, 2004, in Room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. The purpose of this meeting will be to finalize preparations for the 78th Session of the Maritime Safety Committee, and associated bodies of the International Maritime Organization (IMO), which is scheduled for May 12–21, 2004, at IMO Headquarters in London. At this meeting, papers received and the anticipated U.S. positions for the Maritime Safety Committee will be discussed. Among other things, the items of particular interest are:

—Adoption of amendments to SOLAS for emergency training;
—Drilling, maintenance and inspection of life-saving appliances;
—Long range identification and tracking of ships;
—Permanent means of access for oil tankers and bulk carriers;
—Adoption of amendments to the International Maritime Dangerous Goods (IMDG Code);
—Large passenger ship safety;
—Bulk carrier safety;
—Goal-based new ship construction standards;
—Measures to enhance maritime security;
—Reports of nine subcommittees; and
—Ship design and equipment (Bulk Liquids and Gases; Flag State Implementation; Safety of Navigation; Stability, Load Lines and Fishing Vessel Safety; Dangerous Goods, Solid Cargoes and Containers; Fire Protection; Training and Watchkeeping; and Radiocommunications and Search and Rescue).

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Joseph J. Angelo, Commandant (G–MS), U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Room 1218, Washington, DC 20593–0001 or by calling (202) 267–2970.

Dated: March 9, 2004.

Steven D. Poulin,

Executive Secretary, Department of State.

[FR Doc. 04–6123 Filed 3–17–04; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Supplemental Environmental Impact Statement; Washington County, MN, and St. Croix, County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised notice of intent.

SUMMARY: The FHWA is issuing this revised notice to advise the public that a supplemental environmental impact statement (EIS) will be prepared for a proposed highway project on Minnesota Trunk Highway (TH) 36 and Wisconsin State Trunk Highway (STH) 64, including a new crossing of the St. Croix River in Washington County, Minnesota and St. Croix County, Wisconsin. The project extends from TH 5 in Oak Park Heights, Minnesota to approximately 150th Avenue in Houlton, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Federal Highway Administration, Galtier Plaza, 380 Jackson Street, Suite 500, St. Paul, Minnesota 55101, Telephone (651) 291–6120; Todd Clarkowski, Area Engineer, Minnesota Department of Transportation, 1500 West County Road B2, MS 050, Roseville, Minnesota 55113, Telephone (651) 582–1169; or Terry Pederson, District Planning Projects Engineer, Wisconsin Department of Transportation, 718 West Clairemont Avenue, Eau Claire, Wisconsin 54701, Telephone (800) 991–5285 or (715) 836–2857.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation (Mn/DOT) and Wisconsin Department of Transportation, will prepare a supplement to the EIS on a proposal for a new river crossing, including the reconstruction of bridge approach roadways, on TH 36/STH 64 from TH 5 in Oak Park Heights, Washington County, Minnesota to approximately 150th Avenue on STH 35/64 in Houlton, St. Croix County, Wisconsin. Mn/DOT is the lead State agency.

The original EIS for the river crossing (FHWA–MN–EIS–90–92–F) was approved on April 5, 1995 with a Board of Decision issued on July 10, 1995. In 1996, the National Park Service issued an adverse effect finding for the project under section 7(a) of the Federal Wild and Scenic Rivers Act. Therefore, resource agency permits were unable to be issued for the project.

In June 2003, discussion regarding scoping alternatives was reinitiated as part of a Stakeholder Resolution Process. The Stakeholder Group includes Federal, State and Local agencies, environmental groups, historic preservation groups, and other interested organizations. At the Stakeholder Group meetings, all alternatives previously studied, as well as new alternatives, were reconsidered. Through the Stakeholder Resolution Process, five alternatives were identified as having the best potential for meeting the project's transportation needs and environmental and historical impact concerns. A ''2003 Amended Scoping Document and 2003 Amended Draft Scoping Decision Document'' were released in November 2003. Public scoping meetings were held in December 2003. Based on public, agency and Stakeholder Group comments on the document, four alternatives, in addition to the No-Build alternative, have been identified for study in the supplemental Draft EIS.

Therefore, the supplemental EIS will evaluate the social, economic, transportation an environmental impacts of alternatives, including: (1) No-Build, (2) Alternative B—construction of a new four-lane bridge (two through-traffic lanes in each direction) located approximately 6,500 feet south of the existing lift bridge (South Ravine Option), (3) Alternative C—construction of a new four-lane bridge (two through-traffic lanes in each direction) located approximately 3,900 feet south of the existing lift bridge, (4) Alternative D— construction of a new four-lane bridge (two through-traffic lanes in each direction) located approximately 700 feet south of the existing lift bridge on the Minnesota shore and meeting the Wisconsin bluff near the existing lift bridge crossing, and (5) Alternative E—construction of a new two-lane bridge (two through-traffic lanes for eastbound traffic) located approximately 500–700 feet south of the existing lift bridge on the Minnesota shore and meeting the Wisconsin bluff near the existing lift bridge crossing. The existing lift bridge would be used as a two-lane roadway for westbound traffic.

It is anticipated that the final ''2003 Amended Scoping Decision Document'' will be published in March 2004. Coordination has been initiated and will continue with appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the supplemental EIS should be directed to the FHWA 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 on Federal programs and activities apply to this program.)

Issued on: March 8, 2004.

Stanley M. Graczyk,

Project Development Engineer, Federal Highway Administration, St. Paul, Minnesota.

[FR Doc. 04–6114 Filed 3–17–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2004 17331]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ALYAN.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–17331 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before April 19, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 17331. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *ALYAN is:*

Intended Use: ''Sailing charters with six or less passengers for recreation and or sailing instruction.''

Geographic Region: ''New Jersey to Maine.''

Dated: March 12, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–6066 Filed 3–17–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2004 17332]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel BLACK TIE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–17332 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver

criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before April 19, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 17332.

Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel BLACK TIE is:

Intended Use: ''Occasional charters.''

Geographic Region: ''US East Coast and New England.''

Dated: March 12, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–6067 Filed 3–17–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2004 17328]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel DOTSEA.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–17328 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before April 19, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 17328. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document, and all documents entered into this docket, is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DOTSEA is:

Intended Use: ''Lunch and/or Dinner Cruises.''

Geographic Region: ''Eastern Coastal waters of the U.S. and U.S. Virgin Islands.''

Dated: March 12, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–6063 Filed 3–17–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2004 17330]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GENEVIEVE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–17330 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before April 19, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 17330. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document, and all documents entered into this docket, is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel GENEVIEVE is:

Intended Use: ''Private passenger cruises.''

Geographic Region: ''Grand Traverse Bay and Northern Lake Michigan.''

Dated: March 12, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–6065 Filed 3–17–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2004 17333]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LOOKFAR.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–17333 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before April 19, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 17333. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LOOKFAR is:

Intended Use: ''Sailing charters in uninspected vessel.''

Geographic Region: ''Gulf of Mexico.''

Dated: March 12, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–6062 Filed 3–17–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2004 17329]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel VIAGGIO.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–17329 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before April 19, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 17329. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document, and all documents entered into this docket, is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel VIAGGIO is:

Intended Use: ''Term charters for cruising.''

Geographic Region: ''The Great Lakes and the East Coast of the United States from Maine to Florida.''

Dated: March 12, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–6064 Filed 3–17–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–17224]

Evaluation of Federal Motor Vehicle Safety Standard 214 Side Impact Protection; Crush Resistance Requirements for Light Trucks; Technical Report

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments on technical report.

SUMMARY: This notice announces NHTSA's publication of a technical report describing the effectiveness of changes made by vehicle manufacturers to meet Federal Motor Vehicle Safety Standard 214 for light trucks. The report's title is *Evaluation of FMVSS 214 Side Impact Protection for Light Trucks: Crush Resistance Requirements for Side Doors.*

DATES: Comments must be received no later than July 16, 2004.

ADDRESSES: *Report:* The report is available on the internet for viewing online in html format at *http://www.nhtsa.dot.gov/cars/rules/regrev/evaluate/EvalFMVSS214/index.html* and in pdf format at *http://www.nhtsa.dot.gov/cars/rules/regrev/evaluate/EvalFMVSS214/DOTHS809719.pdf.* You may also obtain a copy of the report free of charge by sending a self-addressed mailing label to Marie C. Walz (NPO–321), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

Comments: You may submit comments [identified by DOT DMS Docket Number NHTSA–2004–17224] by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

You may call Docket Management at 202–366–9324 and visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Marie C. Walz, Evaluation Division, NPO–321, Office of Planning, Evaluation and Budget, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–5377. FAX: 202–366–2559. E-mail: *mwalz@nhtsa.dot.gov.*

For information about NHTSA's evaluations of the effectiveness of existing regulations and programs: Visit the NHTSA Web site at *http://www.nhtsa.dot.gov* and click ''Regulations & Standards'' underneath ''Vehicle & Equipment Information'' on the home page; then click ''Regulatory Evaluation'' on the ''Regulations & Standards'' page.

SUPPLEMENTARY INFORMATION: The technical report evaluates changes made by vehicle manufacturers to light trucks (pickup trucks, vans, and sport utility vehicles), which were required to meet a crush resistance standard for side doors beginning September 1, 1993. Data from calendar years 1989 through 2001 of the Fatality Analysis Reporting System (FARS) were used. Effectiveness was determined by comparing changes in the number of fatalities in side impacts relative to those in frontal impacts.

The effectiveness of side door beams for front outboard occupants was estimated to be 19 percent in all single vehicle side impacts, which would result in the saving of 151 lives in those type crashes if all light trucks were equipped with the side beams. Looking at single vehicle nearside impacts only, the effectiveness of the beams was estimated to be 25 percent. Little or no effectiveness was found in multi-vehicle crashes.

Results were consistent with those found for passenger cars in a 1982 NHTSA study, *An Evaluation of Side Structure Improvements in Response to Federal Motor Vehicle Safety Standard 214* (DOT HS 806 314, *http://www.nhtsa.dot.gov/cars/rules/regrev/evaluate/806314.html),* (47 FR 54839).

How Can I Influence NHTSA's Thinking on This Subject?

NHTSA welcomes public review of the technical report and invites reviewers to submit comments about the data and the statistical methods used in the analyses. NHTSA will submit to the Docket a response to the comments and, if appropriate, additional analyses that supplement or revise the technical report.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2004–17224) in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Please send two paper copies of your comments to Docket Management, submit them electronically, fax them, or use the Federal eRulemaking Portal. The mailing address is U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. If you submit your comments electronically, log onto the Dockets Management System Web site at *http://dms.dot.gov* and click on ''Help'' to obtain instructions. The fax number is 1–202–493–2251. To use the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

We also request, but do not require you to send a copy to Marie C. Walz, Evaluation Division, NPO–321, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590 (alternatively, FAX to 202–366–2559 or e-mail to *mwalz@nhtsa.dot.gov*). She can check if your comments have been received at the Docket and she can expedite their review by NHTSA.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NCC–01, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590. Include a cover letter supplying

the information specified in our confidential business information regulation (49 CFR part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit them electronically.

Will the Agency Consider Late Comments?

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How Can I Read the Comments Submitted by Other People?

You may read the comments by visiting Docket Management in person at Room PL–401, 400 Seventh Street, SW., Washington, DC, from 10 a.m. to 5 p.m., Monday through Friday.

You may also see the comments on the Internet by taking the following steps:

A. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov)*.

B. On that page, click on ''Simple Search.''

C. On the next page (*http://dms.dot.gov/search/searchFormSimple.cfm/*) type in the five-digit Docket number shown at the beginning of this Notice (17224). Click on ''Search.''

D. On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

Authority: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

Noble N. Bowie,

Associate Administrator for Planning, Evaluation and Budget.

[FR Doc. 04–6073 Filed 3–17–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34463]

Portage County Board of Commissioners-Acquisition Exemption-Portage Private Industry Council, Inc.

Portage County Board of Commissioners (PC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from the Portage Private Industry Council, Inc., approximately 7.23 miles of rail line (and connecting side tracks) formerly known as Conrail's Freedom Secondary line between milepost 190.04±, near Kent, and milepost 182.82±, near Ravenna, in Portage County, OH.[1] According to PC, the operator of the line will continue to be the current operator, Akron Barberton Cluster Railway Company.

PC certifies that its projected annual revenues will not exceed those that would qualify it as a Class III rail carrier and that its annual revenues are not projected to exceed $5 million.

PC states that the parties intended to consummate the transaction on or after March 2, 2004, the effective date of the exemption (7 days after the exemption was filed).

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. 34463, must be filed with the Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Keith G. O'Brien, Rea, Cross & Auchincloss, 1707 L Street, N.W., Suite 570, Washington, DC 20036.

Board decisions and notices are available on our website at *http://www.stb.dot.gov.*

Decided: March 11, 2004.

By the Board,

David M. Konschnik,

Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–6087 Filed 3–17–04; 8:45 am]

BILLING CODE 4915–01–P

[1] An amendment was filed on March 1, 2004, correcting the description of the line to reflect that the acquired property ends at milepost 190.04 instead of milepost 190.05.

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collections; Comment Requests

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on a new information collection that is proposed for approval by the Office of Management and Budget. The Office of International Affairs within the Department of the Treasury is soliciting comments concerning Treasury International Capital Form D, Report of Holdings of, and Transactions in, Financial Derivatives Contracts with Foreign Residents.

Derivatives have become important financial instruments in the world financial system. Accounting standards for reporting on derivatives have been established, and international standards for reporting economic and financial statistics have been revised to include derivatives. Consequently, the Department of the Treasury is proposing the new quarterly TIC Form D to collect the information necessary for including derivatives in the U. S. balance of payments and international investment position accounts, and in the formulation of U.S. international financial and monetary policies.

DATES: Written comments should be received on or before May 17, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 4410–1440NYA, 1500 Pennsylvania Avenue NW., Washington DC 20220. In view of possible delays in mail delivery, please also notify Mr. Wolkow by e-mail (*dwight.wolkow@do.treas.gov*), Fax (202–622–1207) or telephone (202–622–1276).

FOR FURTHER INFORMATION CONTACT: Copies of the proposed forms and instructions are available on the Treasury's TIC Forms Web page, *http://www.treas.gov/tic/forms.html*. Requests for additional information should be directed to Mr. Wolkow.

SUPPLEMENTARY INFORMATION:

Title: Treasury International Capital Form D, Report of Holdings of, and Transactions in, Financial Derivatives Contracts with Foreign Residents.

OMB Control Number: NEW.

Abstract: Form D will be part of the Treasury International Capital (TIC)

reporting system, which is required by law (22 U.S.C. 286f; 22 U.S.C. 3103; E.O. 10033; 31 CFR part 128) for the purpose of providing timely information on international capital movements other than direct investment by U.S. persons. Form D is a quarterly report used to cover holdings and transactions in derivatives contracts undertaken between foreign resident counterparties and major U.S.-resident participants in derivatives markets. This information is necessary for compiling the U.S. balance of payments and international investment position accounts, and for formulating U.S. international financial and monetary policies.

Current Actions: (a) All derivatives contracts with foreign residents that meet the FASB Statement Nos. 133 and 149 (FAS 133 and 149) definition of a derivatives contract are to be reported on Form D. (b) Form D has three columns. The first column reports the aggregate total fair value at the end of each calendar quarter of all reportable derivatives contracts with a positive fair value. The second column reports the aggregate total fair value at the end of each calendar quarter of all reportable derivatives contracts with a negative fair value. The third column reports the net of all cash receipts (+) and payments (−) during that same reporting quarter for the acquisition, sale, or final closeout of derivatives, including all settlement payments under the terms of derivatives contracts. (c) In part 1 of the form, the grand totals of the three columns described in (b) are divided between over-the-counter (OTC) contracts and exchange-traded contracts. (d) In part 1 of the form, the OTC contracts are broken down into three categories: Single-Currency Interest Rate Contracts, Foreign Exchange Contracts, and Other Contracts. In addition, the interest rate and foreign exchange contract categories each are further broken down into three categories: Forwards, Swaps and Options. (e) In part 1 of the form, the exchange-traded contracts are broken down into three categories: Own Contracts on Foreign Exchanges, U.S. Customers' Derivatives Contracts on Foreign Exchanges, and Foreign Counterparties' Derivatives Contracts on U.S. Exchanges. (f) In part 1 of the form, three memorandum rows report information on contracts with own foreign offices, contracts with foreign official institutions (FOI), and contracts of U.S. depository institutions with foreigners. However, while the first two columns of fair values are required for all three of these rows, the third column of net settlements is only required for the FOI row. (g) In part 2 of the form, the grand totals of the three columns in part 1 each are broken down by the country of residence of the direct foreign counterparty to the contracts. (h) The reporting panel is expected to consist of all U.S.-resident participants in derivatives markets, where each reporter holds derivatives having a total notional value in excess of $100 billion, measured on a consolidated-worldwide accounting basis. The worldwide total includes all derivatives contracts with both U.S. and foreign residents, and all contracts in the accounts of both the reporter and the reporter's customers. (i) Once the exemption level of $100 billion is exceeded, a reporter must submit reports for that quarter and each of the remaining quarters in the current calendar year. (j) In order to reduce the reporting burden associated with implementing this information collection, these mandatory reporting requirements will be phased in over a period of 3 quarters. In phase 1, reporting will begin for all fair value positions in the first two columns, and net settlements for only OTC foreign exchange contracts. This phase will be effective beginning with the March 2005 reporting date, which covers the first quarter of 2005. In phase 2, reporting will begin for net settlements data for all exchange-traded contracts and will be effective beginning with the June 2005 report date, which covers the second quarter of 2005. In the final phase, reporting will begin for all of the remaining net settlements data (OTC Interest Rate Contracts, other OTC contracts, contracts with FOIs, and the country breakout in part 2 of the form). This Phase will be implemented beginning with the September 2005 report date, which covers the third quarter of 2005.

Type of Review: NEW.

Affected Public: Business or other for profit organizations. Form D (NEW).

Estimated Number of Respondents: 40.

Estimated Average Time per Respondent: Thirty (30) hours per respondent per filing, effective with the report as of September 2005 when mandatory reporting is fully implemented.

Estimated Total Annual Burden Hours: 4,800 hours, based on 4 reporting periods per year.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) whether Form D is necessary for the proper performance of the functions of the Office, including whether the information will have practical uses; (b) the accuracy of the above estimate of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation, maintenance and purchase of services to provide information.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. 04–6057 Filed 3–17–04; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of International Affairs; Survey of Foreign Ownership of U.S. Securities as of June 30, 2004

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Department of the Treasury is informing the public that it is conducting a mandatory survey of foreign ownership of U.S. securities as of June 30, 2004. This Notice constitutes legal notification to all United States persons (defined below) who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, this survey. Copies of the reporting forms SHL and instructions may be printed from the Internet at: *http://www.treas.gov/tic/forms.html.*

Definition: A U.S. person is any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State, provincial, or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency), who resides in the United States or is subject to the jurisdiction of the United States.

Who Must Report: The following U.S. persons must report on this survey: (1) U.S. persons who manage the safekeeping of U.S. securities (as specified below) for foreign persons. These U.S. persons, who include the

affiliates in the United States of foreign entities, and are henceforth referred to as U.S. custodians, must report on this survey if the total market value of the U.S. securities whose safekeeping they manage on behalf of foreign persons—aggregated over all accounts and for all U.S. branches and affiliates of their firm—is $100 million or more as of June 30, 2004.

(2) U.S. persons who issue securities, if the total market value of their securities owned directly by foreign persons—aggregated over all securities issued by all U.S. subsidiaries and affiliates of the firm, including investment companies, trusts, and other legal entities created by the firm—is $100 million or more as of June 30, 2004. U.S. issuers should report only foreign holdings of their securities which are directly held for foreign residents, *i.e.*, where no U.S.-resident custodian or central securities depository is used. Securities held by U.S. nominees, such as bank or broker custody departments, should be considered to be U.S.-held securities as far as the issuer is concerned.

What to Report: This survey will collect information on foreign resident holdings of U.S. securities, including equities, short-term debt securities (including selected money market instruments), and long-term debt securities.

How to Report: Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be obtained by contacting the survey staff of the Federal Reserve Bank of New York at (212) 720–6300, e-mail: *SHLA.help@ny.frb.org.* The mailing address is: Federal Reserve Bank of New York, Statistics Function, 4th Floor, 33 Liberty Street, New York, NY 10045–0001. Inquiries can also be made to Mr. William L. Griever, Federal Reserve Board of Governors, at (202) 452–2924, e-mail: *william.l.griever@frb.gov;* or to Dwight Wolkow at (202) 622–1276, e-mail: *wolkowd@do.treas.gov.*

When to Report: Data should be submitted to the Federal Reserve Bank of New York, acting as fiscal agent for the Department of the Treasury, by August 31, 2004.

Paperwork Reduction Act Notice: This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 1505–0123. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. The estimated average annual burden associated with this collection of information is 16 hours per respondent for exempt reporters, 48 hours per respondent for issuers of securities (but this figure will vary widely for individual issuers, up to about 136 hours), and 176 hours per respondent for custodians of securities (but this figure will vary widely for individual custodians, up to about 472 hours). Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Department of the Treasury, Attention Administrator, International Portfolio Investment Data Systems, Room 4410 @ 1440NYA, Washington, DC 20220, and to OMB, Attention Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Reporting Systems.

[FR Doc. 04–6056 Filed 3–17–04; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8809

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8809, Request for Extension of Time To File Information Returns.

DATES: Written comments should be received on or before May 17, 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 form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request for Extension of Time To File Information Returns.

OMB Number: 1545–1081.

Form Number: Form 8809.

Abstract: Form 8809 is used to request an extension of time to file Forms W–2, W–2G, 1042–S, 1098, 1099, 5498, or 8027. The IRS reviews the information contained on the form to determine whether an extension should be granted.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, farms, and Federal, State, local or tribal governments.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 3 hours, 15 minutes.

Estimated Total Annual Burden Hours: 162,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 15, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–6142 Filed 3–17–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease of Property at the Department of Veterans Affairs Medical Center, Saint Cloud, MN

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to enter into an enhance-use lease.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) intends to outlease four acres of land at the Department of Veterans Affairs Medical Center, in Saint Cloud, Minnesota, under an enhanced-use lease. The Department intends to enter into a 50-year lease of real property with a selected lessee/developer who would be responsible for all costs and risks associated with the design, construction, operation and maintenance of an affordable housing facility not less than 60-units and a caretaker's unit for veterans and non-veterans.

FOR FURTHER INFORMATION CONTACT: Vanessa Chambers, Capital Asset Management and Planning Service (182C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–6554.

SUPPLEMENTARY INFORMATION: 38 U.S.C. Section 8161, *et seq.* specifically provides that the Secretary may enter into an enhanced-use lease if he determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property or result in improved services to veterans. This project meets these requirements.

Approved: March 10, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 04–6084 Filed 3–17–04; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
March 18, 2004

Part II

Securities and Exchange Commission

17 CFR Part 249

First-Time Application of International Financial Reporting Standards; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release Nos. 33–8397; 34–49403; International Series Release No. 1274; File No. S7–15–04]

RIN 3235–AI92

First-Time Application of International Financial Reporting Standards

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendment to form.

SUMMARY: The Commission is proposing to amend Form 20–F to provide a one-time accommodation relating to financial statements prepared under International Financial Reporting Standards (''IFRS'') for foreign private issuers registered with the SEC. This accommodation would apply to foreign private issuers that have not previously published financial statements under IFRS, formerly known as International Accounting Standards (''IAS''), and that publish IFRS financial statements for the first time for any financial year beginning no later than January 1, 2007.

The accommodation would permit eligible foreign private issuers for their first year of reporting under IFRS to file two years rather than three years of statements of income, changes in shareholders' equity and cash flows prepared in accordance with IFRS, with appropriate related disclosure. The accommodation would retain current requirements regarding the reconciliation of financial statement items to generally accepted accounting principles (''GAAP'') as used in the United States (''U.S. GAAP''), but modify the form in which the reconciliations are presented in the first filing that includes IFRS financial statements.

In addition, we are proposing to amend Form 20–F to require certain disclosures of all foreign registrants that change their basis of accounting to IFRS.

DATES: Please submit your comments on or before April 19, 2004.

ADDRESSES: Comments may be submitted electronically or by paper. Electronic comments may be submitted by: (1) electronic form on the SEC Web site (*http://www.sec.gov*) or (2) e-mail to *rule-comments@sec.gov*. Mail paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0609. All submissions should refer to file number S7–13–04; this file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov*).[1] Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Questions about this release should be directed to Michael D. Coco, Special Counsel, Office of International Corporate Finance, Division of Corporation Finance, at (202) 942–2990, or to Susan Koski-Grafer, Office of the Chief Accountant, (202) 942–4400, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment proposed amendments to Form 20–F[2] under the Securities Exchange Act of 1934 (the ''Exchange Act'').[3] Form 20–F is the combined registration statement and annual report form for foreign private issuers[4] under the Exchange Act. It also sets forth disclosure requirements for registration statements filed by foreign private issuers under the Securities Act of 1933 (the ''Securities Act'').[5]

I. Background

A. Overview of the Proposal

Foreign private issuers that register securities with the SEC, and that report on a periodic basis thereafter under section 13(a) or 15(d) of the Exchange Act,[6] are currently required to present audited statements of income, changes in shareholders' equity and cash flows for each of the past three financial years,[7] prepared on a consistent basis of accounting.[8] These issuers also are generally required to present selected financial data covering each of the past five financial years.[9]

The Commission is proposing for comment a new General Instruction G to Form 20–F that would allow a foreign private issuer that has not previously published financial statements under IFRS to omit for its first year of reporting under IFRS financial statements for the earliest of the three financial years for which it would otherwise be required to file financial statements under our current rules. This proposed accommodation would be available to issuers that adopt IFRS, either voluntarily or by mandate, for the first time for a financial year that begins no later than January 1, 2007.[10] We are making this proposal as a one-time accommodation to eligible foreign private issuers who, under current SEC rules, would be required to provide audited financial statements prepared in accordance with IFRS for the latest three financial years when they change their basis of accounting to IFRS. These proposals are intended to facilitate the transition of foreign companies to IFRS and to improve the quality of their financial disclosure. For similar reasons, we are soliciting comment on various alternatives with respect to the presentation of interim financial statements prepared in accordance with IFRS by issuers during their transition.

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[1] We do not edit personal, identifying information, such as names or electronic mail addresses, from electronic submissions. Submit only information that you wish to make publicly available.

[2] 17 CFR 249.220f.

[3] 15 U.S.C. 78a *et seq*.

[4] The term ''foreign private issuer'' is defined in Exchange Act Rule 3b–4(c) [17 CFR 240.3b–4(c)]. A foreign private issuer is a non-government foreign issuer, except for a company that (1) has more than 50% of its outstanding voting securities owned by U.S. investors and (2) has either a majority of its officers and directors residing in or being citizens of the United States, a majority of its assets located in the United States, or its business principally administered in the United States.

[5] 15 U.S.C. 77a *et seq*.

[6] 15 U.S.C. 78m(a) or 78o(d). Section 13(a) of the Exchange Act requires every issuer of a security registered pursuant to Section 12 of the Exchange Act [15 U.S.C. 781] to file with the Commission such annual reports and such other reports as the Commission may prescribe. Section 15(d) of the Exchange Act requires each issuer that has filed a registration statement that has become effective pursuant to the Securities Act to file such supplementary and periodic information, documents and reports as may be required pursuant to Section 13 in respect of a security registered pursuant to Section 12, unless the duty to file under Section 15(d) has been suspended for any financial year.

[7] Consistent with Form 20–F, IFRS and general usage outside the United States, we use the term ''financial year'' to refer to a fiscal year. See Instruction 2 to Item 3 of Form 20–F.

[8] See Item 8.A.2 for Form 20–F. Foreign private issuers are also required to present audited balance sheets as of the end of the past two financial years.

[9] See Item 3.A.1 of Form 20–F.

[10] As described below in Section I.C, in several countries the presentation of financial statements in accordance with IFRS becomes mandatory for financial years starting on or after January 1, 2005. For purposes of this release, we refer to that financial year as ''year 2005,'' regardless of the actual beginning date of a company's financial year, and the three prior financial years as ''year 2002,'' ''year 2003,'' and ''year 2004,'' respectively. Accordingly, the financial statements for those years are referred to as ''year 2002 financial statements,'' ''year 2003 financial statements,'' and ''year 2004 financial statements.'' For issuers adopting IFRS for the first time during another financial year, we refer to the earliest of the three years for which financial statements are presently required under Form 20–F as the ''third financial year,'' the second financial year as the ''second financial year,'' and the financial year in which an issuer switches to IFRS as the ''most recent financial year.''

In addition, we are proposing certain disclosures from foreign private issuers that change their basis of accounting to IFRS during any year. This disclosure relates to certain mandatory and elective accounting treatments that an issuer may apply in adopting IFRS for the first time and the reconciliations from Previous GAAP [11] to IFRS required by IFRS. The proposed disclosures would provide investors with consistent and transparent information about the transition by a company from Previous GAAP to IFRS and the impact of that transition on the company's published financial results.

B. International Financial Reporting Standards

The International Accounting Standards Board (''IASB'') was established under the International Accounting Standards Committee Foundation to develop global standards for financial reporting. The IASB is now empowered to develop and approve IFRS independently.[12] Effective April 1, 2001, the IASB assumed accounting standard setting responsibilities from its predecessor body, the International Accounting Standards Committee (''IASC'').[13]

In February 2000, the Commission issued a Concept Release on International Accounting Standards, seeking public comment on the elements necessary to encourage convergence towards a high quality global financial reporting framework while upholding the quality of financial reporting domestically.[14] The release also sought comments as to the conditions under which the Commission should accept financial statements of foreign private issuers that are prepared using IFRS, including the issue of reconciliation of financial statements prepared under IFRS to U.S. GAAP. The Commission has not proposed or adopted any rules as a result of the concept release, and continues to monitor international developments in the subject areas that are discussed in the release. The staff has encouraged the efforts of the Financial Accounting Standards Board (''FASB'') and the IASB to work towards achieving greater convergence between U.S. GAAP and IFRS to achieve a common set of high-quality accounting standards.[15] While convergence towards such a common set of standards, together with other developments promoting uniform interpretation and effective enforcement in respect of IFRS, would provide an opportunity for us to consider acceptance of financial statements prepared under IFRS without reconciliation to U.S. GAAP, we are not at this time proposing to eliminate the U.S. GAAP reconciliation.

C. Countries Adopting IFRS as National Accounting Standards

Several countries in the European Union (''EU'') and elsewhere throughout the world currently allow their domestic issuers, or foreign issuers, or both, to prepare financial statements for securities regulatory purposes using IFRS.[16] In June 2002, the EU adopted a regulation requiring companies incorporated under the laws of one of its Member States, and whose securities are publicly traded within the EU (''listed EU companies''), to prepare their consolidated financial statements for each financial year starting on or after January 1, 2005 on the basis of accounting standards issued by the IASB.[17] This regulation applies to listed EU companies in all present and future EU Member States,[18] and the EU Member States may extend the requirements to non-public companies. Other countries, including Australia, also have adopted similar requirements mandating the use of IFRS by public companies for all periods beginning after January 1, 2005.

In accordance with these requirements, listed EU companies in those countries not currently using IFRS must convert from the existing national accounting standards to IFRS no later than 2005.[19] The companies also will have to provide financial statements and transitional disclosures as directed by IFRS and by national securities regulators and other authorities in those countries. It has been estimated that these requirements will affect approximately 7,000 companies in the EU.[20]

IFRS are in a period of significant updating and improvement in preparation for the implementation of IFRS for such a large number of companies in 2005. The IASB has stated that following completion of standards setting revision and development work in early 2004, it will establish a ''quiet period'' during which any further new standards issued would not have required implementation dates until after year 2005.[21]

IFRS 1 requires only one year of comparative information for the year IFRS is adopted, but allows for the presentation of additional years either voluntarily or pursuant to regulation. With certain exceptions, IFRS 1 requires a company to apply retrospectively for all periods presented the IFRS standards in place at the end of the year in which the company adopts IFRS, rather than those IFRS standards that were in effect

[11] This release and the proposed amendments use the term ''Previous GAAP'' to refer to the basis of accounting that a first-time adopter uses immediately before adopting IFRS. This usage is consistent with IFRS. See International Financial Reporting Standard 1: ''First-time Adoption of International Financial Reporting Standards,'' as issued in 2003 (''IFRS 1''), Appendix A.

[12] Standards that are newly developed by the IASB or are extensive revisions of earlier International Accounting Standards are entitled International Financial Reporting Standards. In general usage, and in this release, the term IFRS will be used to encompass both IAS and IFRS. The term IFRS is used to refer both to the body of IASB pronouncements generally and to individual standards applicable in specific circumstances. Standards applicable to first-time adopters are set forth in IFRS 1. For purposes of this release, financial statements ''based on IFRS'' and ''prepared in accordance with IFRS'' refer to financial statements that an issuer can unreservedly and explicitly state are in compliance with IFRS and that are not subject to any qualification relating to the application of IFRS.

[13] This was the culmination of a reorganization in 2000 based on the recommendations of the report ''Recommendations on Shaping the IASC for the Future.'' From 1973 until that restructuring, the entity for setting International Accounting Standards had been known as the IASC. The IASC issued 41 standards on major topical areas through December 2000, which are entitled International Accounting Standards. There was no actual ''committee'' of that name, although the predecessor standard-setting board was known as the IASC Board.

[14] Release No. 33–7801 (February 16, 2000).

[15] See ''Chief Accountant Welcomes Actions by FASB and IASB,'' Press Release 2003–178, December 19, 2003 (available at *http://www.sec.gov/news/press/2003–178.htm*) and ''Actions by FASB, IASB Praised,'' Press Release 2002–154, October 29, 2002 (available at *http://www.sec.gov/news/press/2002–154.htm).*

[16] See *http://www.iasplus.com/country/useias.htm* for a list of countries that require or allow the use of IFRS.

[17] Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, Official Journal L. 243, 11/09/2002 P. 0001–0004 (the ''EU Regulation''). EU regulations have the force of law within EU Member States without further implementing legislation at the national level.

[18] The current EU Member States are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, and the United Kingdom. The ten countries approved for EU membership starting in May 2004 are: the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovenia and the Slovak Republic. These IFRS requirements also apply in the three European Economic Area countries of Iceland, Liechtenstein, and Norway.

[19] In the EU, a limited number of companies meeting certain criteria will be permitted an extension until 2007 to adopt IFRS. See Section II.A, below.

[20] Committee of European Securities Regulators (''CESR''), ''European Regulation on the Application of IFRS in 2005: Recommendation for Additional Guidance Regarding the Transition to IFRS,'' (December 2003) (''CESR Recommendation'').

[21] See the September 2003 presentation on the IASB website at *http://www.iasb.org.uk/docs/bdpapers/2003/0309w02.pdf* for reference to the 2005 ''stable platform.''

during those periods. SEC rules usually would require companies that change their basis of accounting to another GAAP to present audited financial statements for the past three financial years in the new GAAP. However, at the beginning of year 2003, the IASB had not finalized some of the IFRS that many foreign private issuers will be required to apply retrospectively when they adopt IFRS for the first time for year 2005. We recognize that because some standards were not yet finalized during the reporting period to which they will have to be applied, the application of IFRS in the preparation of financial statements for year 2003 could be difficult and burdensome. In addition, we are aware that the nature of the national conversions to IFRS and the number of companies that are expected to convert, either by mandate or voluntarily, present particular concerns for companies and the accounting profession for the preparation of IFRS financial statements. These considerations will compound the difficulties ordinarily encountered in restating prior reporting periods under new accounting standards. As a result, we are proposing these changes to Form 20–F at this time to facilitate the transition of companies to IFRS. As discussed below, because IFRS may continue to be developed that may affect issuers that adopt IFRS in future years, we propose that the accommodation also extend to first-time adopters for financial years beginning no later than January 1, 2007.

II. Discussion of Proposed Accommodation To Permit Omission of IFRS Financial Statements for the Third Financial Year

The Commission's present requirement for foreign private issuers providing information in accordance with Form 20–F is for three years of audited statements of income, changes in shareholders' equity and cash flows, and two years of audited balance sheets, prepared on a consistent basis of accounting.[22] For example, current rules would require that a calendar year company preparing its financial statements for filing with the Commission for the financial year ended December 31, 2005, include audited statements of income, changes in shareholders' equity and cash flows for each of the years ended December 31, 2003, 2004 and 2005, together with audited balance sheets as of December 31, 2004 and 2005, all prepared in accordance with a single set of generally accepted accounting principles.

Issuers that adopt IFRS for the first time for year 2005 may encounter significant difficulties in presenting statements of income, equity, and cash flows for year 2003 due to the number and scope of IFRS improvement projects that were not finalized at the beginning of year 2003. The Commission is concerned that companies in this situation may have difficulty recasting results accurately under IFRS for year 2003, and may find that such efforts would involve undue cost and effort for an uncertain benefit. We also are concerned that efforts undertaken to ''look back'' on those results for the third financial year, particularly year 2003 results, and attempts to recast those results under IFRS as they exist at the end of year 2005 or later, may be unduly burdensome for some companies to execute at the time they first adopt IFRS.[23]

A. Eligibility Requirements

The proposed accommodation would apply to a foreign private issuer that adopts IFRS for the first time for a financial year that begins no later than January 1, 2007. It would not be available to a company that previously had published audited financial statements prepared in accordance with IFRS, either voluntarily or by mandate. The proposed accommodation also would not be available to a company adopting a set of accounting standards that includes deviations from the standards promulgated by the IASB and the IASC. The accommodation would only be available to a company that is able to state unreservedly and explicitly that its general-purpose financial statements comply with IFRS, and whose audited financial statements are not subject to any qualification relating to the application of IFRS.

Under the EU Regulation mandating the use of IFRS, EU Member States may allow companies to defer their adoption of IFRS until year 2007 if (1) a company is listed both in the EU and on a non-EU exchange and currently uses internationally accepted standards as its primary accounting standards, or (2) a company has only publicly traded debt securities. Because IFRS may continue to evolve, issuers that initially adopt IFRS for years after 2005 also may face difficulties in preparing IFRS financial statements for the third financial year. We therefore believe it is appropriate to allow the accommodation to apply to companies that adopt IFRS for the first time for any financial year through year 2007, whether they do so voluntarily, under the extended compliance provisions of the EU Regulation, or under another mandate.

Eligible issuers would be able to apply the proposed accommodation to registration statements and annual reports. For an issuer to be eligible to exclude IFRS financial statements for the third financial year from a registration statement (1) the most recent audited financial statements required by Item 8.A.2 of Form 20–F must be for a financial year beginning no later than January 1, 2007, (2) the company must not have previously published audited financial statements prepared in accordance with IFRS for an earlier financial year, and (3) the audited financial statements for the company's most recent financial year must be prepared in accordance with IFRS.

To be eligible to apply the accommodation to an annual report relating to a company's financial year beginning no later than January 1, 2007, (1) the company must not have previously published audited financial statements prepared in accordance with IFRS for an earlier financial year and (2) the company must have prepared its audited financial statements for the year covered by the annual report in accordance with IFRS.

As proposed, the accommodation would extend to companies that switch their basis of accounting to IFRS for a financial year that begins no later than January 1, 2007. We are proposing this time frame, in part, because of the requirements outlined under the EU Regulation.[24] Below we ask for comments on whether this proposed time frame is appropriate.

Questions

- Will the conversion to IFRS for year 2005 make it difficult for issuers to recast year 2003 results accurately? What specific issues will be encountered and how difficult will they be to address? What additional information would first-time adopters

[22] See Item 8.A.2 for Form 20–F.

[23] These companies would be following the standards pronounced in IFRS 1, which requires retrospective application in most areas, and requires comparative financial statements for year 2004 for companies that present IFRS financial statements for the first time for year 2005. IFRS 1 does allow specific limited exemptions from its provisions to avoid costs that would be likely to exceed the benefits to users of financial statements. For example, a company may measure an item of property, plant and equipment at the date of transition to IFRS at its fair value rather than historical cost. IFRS 1 also prohibits retrospective application of IFRS if that would require management to make judgments about past conditions where the outcome of a transaction is already known.

[24] See footnote 17, above.

need to provide IFRS financial statements for the third-year back that they would not already have in connection with their reconciliation to U.S. GAAP? What other difficulties might the application of IFRS create for first-time adopters? Will first-time adopters in earlier or later years face similar issues? Are the proposed amendments appropriate to address those challenges? If not, what issues are not addressed by the proposed amendments? Should they be addressed, and, if so, how?

- Will any first-time adopters be required by their home country to publish financial statements prepared in accordance with IFRS for the third year back? If so, should we require their inclusion in SEC filings? Why or why not? If a company publishes IFRS financial statements for the third year back but is not required to do so, should we require inclusion of those financial statements in SEC filings?

- Is the proposed time frame, which provides the accommodation to companies that switch to IFRS for any financial year beginning no later than January 1, 2007, appropriate? Would this date create eligibility concerns for issuers that have a 52-week financial year? If so, how should we address those concerns?

- Should the proposed accommodation be extended to apply in any other circumstances, such as for issuers that, either voluntarily or pursuant to a home country or other requirement, adopt IFRS for the first time for years after year 2007? Should the accommodation apply for an indefinite period? Are there other circumstances in which the proposed exception to the requirement to present three years of financial statements on a consistent basis should be considered? What are they?

- Would extending the proposed accommodation to apply to issuers that adopt IFRS for the first time later than year 2007 encourage a broader use of IFRS? Why or why not?

- If first-time adopters of IFRS were not able to avail themselves of the proposed accommodation, would they be likely to continue to include in their SEC filings financial statements prepared in accordance with Previous GAAP rather than preparing financial statements prepared in accordance with IFRS for the third financial year? What are the advantages and disadvantages of each approach?

B. Primary Financial Statements

1. IFRS Financial Statements

With respect to the consolidated financial statements and other financial information required by Item 8.A of Form 20–F, the proposed amendment would allow eligible foreign private issuers for their first year of reporting under IFRS to present only two years of audited IFRS financial statements in their applicable filings instead of three years. Eligible companies would be permitted to omit audited financial statements for the earliest of the three years prepared in accordance with IFRS when providing the financial statements required by Item 8.A.2. For example, an eligible foreign private issuer that changes to IFRS in its Form 20–F annual report for its year ended December 31, 2005 would present, as its financial statements required by Item 8.A, audited balance sheets prepared in accordance with IFRS as of December 31, 2004 and 2005, and audited statements of income, shareholders' equity and cash flows prepared in accordance with IFRS for the years ended December 31, 2004 and 2005. All instructions to Item 8, including instructions requiring audits in accordance with U.S. generally accepted auditing standards, would continue to apply.

All first-time adopters are required under IFRS 1 to include in the notes to the financial statements a reconciliation to IFRS from Previous GAAP. The proposed form and content requirements for this reconciliation in SEC filings are discussed below in Section III.B.

2. U.S. GAAP Financial Information

In accordance with Items 17(c) or 18 of Form 20–F, as applicable, companies relying on the accommodation would continue to be required to provide a reconciliation to U.S. GAAP for the two financial years covered by the financial statements prepared in accordance with IFRS. That reconciliation is required to be audited and would be included as a note to the audited financial statements. We are not proposing any changes with respect to this reconciliation to U.S. GAAP.

While this proposal seeks to address the difficulties that would be imposed on companies in connection with the preparation of audited financial statements under IFRS for the third financial year, we believe that investors nonetheless find valuable three-year trend information that is prepared on a consistent basis of accounting. Although companies making use of the proposed accommodation will not have three-year information based on IFRS, in almost all instances they will have available three-year information based on U.S. GAAP. However, U.S. GAAP information is generally presented in the form of a reconciliation from the GAAP used in the primary financial statements. Companies making use of the accommodation will not present financial statements based on IFRS for the third financial year. Further, as discussed below, the filing will not necessarily include financial statements based on Previous GAAP. In addition, any reconciliation to U.S. GAAP from IFRS would have different starting points and different reconciling items than the previously prepared reconciliation from Previous GAAP to U.S. GAAP, and investors would not have a consistent base on which to evaluate the adjustments made to produce U.S. GAAP information.

To ensure that filings will contain three years of information prepared on a consistent basis of accounting, we are proposing that companies that use the accommodation present, as part of the U.S. GAAP reconciliation footnote, condensed U.S. GAAP financial information for the three most recent financial years in a level of detail consistent with that for interim financial statements required by Article 10 of Regulation S–X.[25] This financial information will include condensed income statements and balance sheets prepared in accordance with U.S. GAAP, but neither notes to this information nor a statement of changes to shareholders' equity will be required.[26] The financial information would be required to be audited and generally would be included in the U.S. GAAP reconciliation note to a

[25] 17 CFR 210.10–01. This is consistent with existing staff practice of requiring Article 10-level U.S. GAAP information when the numerical reconciliation of net income and shareholder equity alone is not sufficient to produce an information content substantially similar to U.S. GAAP and Regulation S–X as specified by Items 17 and 18 of Form 20–F.

[26] We are not proposing to require that companies provide a balance sheet prepared in accordance with U.S. GAAP for the third year back. We also are not proposing to require condensed cash flow statements prepared in accordance with U.S. GAAP. Item 17(c)(2)(iii) of Form 20–F permits cash flow statements prepared in accordance with International Accounting Standard 7, as amended in October 1992, without a reconciliation to U.S. GAAP. Therefore, the cash flow statements for the past two financial years prepared in accordance with IFRS by a first-time adopter making use of the accommodation would not be required to be reconciled to U.S. GAAP. In light of the absence of U.S. GAAP information for those two financial years, requiring a condensed cash flow statement for the third financial year would appear not useful to investors as well as overly burdensome to companies.

company's audited financial statements based on IFRS.

In their initial registration statements filed with the SEC, foreign private issuers that do not use U.S. GAAP to prepare their primary financial statements are required to prepare a reconciliation to U.S. GAAP covering the two most recent financial years.[27] Foreign private issuers in this situation would not be required to present the additional condensed U.S. GAAP financial information.

3. Previous GAAP Financial Statements

As proposed, issuers that rely on the accommodation will not be required to include any financial statements, textual discussion or other financial information based on their Previous GAAP. The exclusion of Previous GAAP financial statements is intended to decrease the risk of investor confusion because filings will not contain two sets of audited financial statements based on different accounting principles that are not comparable. The proposal also is intended to relieve issuers of the burden of maintaining two sets of financial statements and obtaining auditor consents for financial statements prepared on a basis of accounting that issuers no longer use.

We do not propose to prohibit issuers from including, incorporating by reference or referring to Previous GAAP financial statements in their annual reports, registration statements and prospectuses filed with the SEC. Issuers may elect to include or incorporate by reference financial statements prepared in accordance with Previous GAAP for the two financial years preceding the most recent financial year and selected historical financial data based on Previous GAAP for the four years preceding the most recent financial year. Issuers that elect to include or incorporate by reference financial information prepared in accordance with Previous GAAP would similarly include or incorporate narrative disclosure of the company's operating and financial review and prospects under Item 5 of Form 20–F for the reporting periods covered by Previous GAAP financial information.[28]

Issuers also may refer to Previous GAAP financial statements and financial information without including or incorporating these materials in a disclosure document. For example, a company may find it useful to refer investors to its prior year annual report which included Previous GAAP financial information. However, if an issuer includes, incorporates by reference or refers to Previous GAAP selected financial data or financial information in a disclosure document, then the issuer would, under the proposed amendments to Form 20–F, ensure that there is appropriate cautionary language with respect to that data. Issuers electing to include or incorporate Previous GAAP financial information must disclose, at an appropriate prominent location, that the filing contains financial information based on the basis of accounting that the company previously used, which is not comparable to financial information based on IFRS. We are not proposing specific legends or language that should be used by issuers in this situation, since we believe that appropriate language may vary depending on the use made of Previous GAAP information.

Questions

- Is the proposed amendment to permit two years of IFRS financial statements for foreign private issuers adopting IFRS through year 2007, coupled with the permitted exclusion of financial statements prepared on the basis of Previous GAAP, consistent with the best interests of investors? Will investors receive adequate information on which to base investment decisions if two rather than three years of statements of income, changes in shareholders' equity and cash flows are presented on a consistent basis?
- Are there other alternatives that should be considered to address the challenges presented by the mandated use of IFRS? What are they?
- Would the presentation of three years of condensed U.S. GAAP financial information in a level of detail consistent with interim financial statements prepared under Article 10 of Regulation S–X create a significant burden to first-time adopters of IFRS? What would be the difficulties and costs of preparing that information? Would that level of information be useful to investors? What level of information would be useful to investors and not unduly burdensome to prepare?
- If a filing does not contain Previous GAAP financial statements or IFRS financial statements for the third year back, would the proposed requirement for three years of condensed U.S. GAAP information adequately address issues related to the different starting points and reconciling items used in the reconciliations from Previous GAAP to U.S. GAAP and from IFRS to U.S. GAAP?
- Do our proposals contain sufficient guidance on the form and content of the condensed U.S. GAAP financial information to be provided? Should we require financial information beyond income statements and balance sheets from companies that would be required to provide condensed U.S. GAAP information? If so, what further information? Should we require that they include notes to the financial information in addition to the required reconciliation?
- Should foreign private issuers that do not use U.S. GAAP to prepare their primary financial statements in their initial registration statements filed with the SEC be required to present the additional condensed U.S. GAAP financial information in addition to the two-year reconciliation to U.S. GAAP? Why or why not? Would this be unduly burdensome?
- Should issuers be prohibited from including Previous GAAP financial statements, financial information and textual discussions based thereon in a registration statement, prospectus or annual report prepared in accordance with Form 20–F?
- If we were to prohibit issuers from including Previous GAAP financial statements and financial information in a document, should we require, permit or prohibit the issuer to make reference to other SEC filings or other documents that include such financial statements and information?
- Is is appropriate to permit issuers to include, incorporate or refer to Previous GAAP financial information and, if so, for what periods and to what extent? If issuers elect to include or incorporate Previous GAAP financial information, should we require operating and financial review and prospects disclosure pursuant to Item 5 of Form 20–F related to that information?
- Would Previous GAAP financial statements be useful to investors and should issuers be required to provide them? Should inclusion in previous annual reports filed with us on Form 20–F be sufficient in this regard? Would investors be likely to compare information based on IFRS with information based on Previous GAAP? If we require or permit financial statements and other information based on Previous GAAP, where should that information be located and how should it be formatted?
- Is inclusion of Previous GAAP financial information likely to cause investor confusion regarding the basis of accounting used in preparing financial information? How could any confusion or comparison be minimized? Should we provide more specific guidance on the location or substance of disclosure stating that a filing contains financial

[27] Item 17(c)(2)(i) of Form 20–F.

[28] See Section II.D, below.

information based on Previous GAAP that is not comparable to financial information based on IFRS?

• Should Previous GAAP financial information be presented in a ''side-by-side'' format with IFRS financial information?[29] What additional disclosure would be necessary, if any? Should it be accompanied by a legend stating that the information is not comparable to financial information based on IFRS? If so, where should the legend be located? Would a ''side-by-side'' format present difficulties relating to disclosure contained in audit reports relating to the different bases of GAAP used? Similarly, how would the notes to the financial statements be presented in a clear manner if different GAAPs were presented therein?

• If issuers include, incorporate or refer to Previous GAAP financial statements or financial information in a disclosure document, should we require specific legends or other language? Should any Previous GAAP information included be presented in a separate section of the disclosure document?

C. Selected Financial Data

Under Item 3.A of Form 20–F, issuers must provide five years of selected financial data. The company may omit data for the earliest two years if it represents that the information cannot be provided without unreasonable effort or expense and states the reasons in the filing.[30] As part of the accommodation for foreign private issuers switching to IFRS, we are proposing to include in new General Instruction G to Form 20–F an instruction that would address how first-time adopters should present their selected financial data.

The proposed amendment requires that eligible issuers, in providing the key financial information about their financial condition pursuant to Item 3.A of Form 20–F, provide selected historical financial data based on IFRS for the two most recent financial years. Selected historical financial data prepared in accordance with U.S. GAAP shall continue to be required for the five most recent financial years, unless the company is permitted to omit U.S. GAAP information for any of the earliest of the five years under Instruction 2 to Item 3.A.

As with Previous GAAP financial statements, we do not propose to require or prohibit issuers from including, incorporating by reference or referring to Previous GAAP selected financial data in their annual reports, registration statements and prospectuses filed with the SEC.[31] If an issuer includes, incorporates by reference or refers to Previous GAAP selected financial data or financial information in a disclosure document, then the issuer should take care to assure that there is appropriate cautionary language with respect to that data. However, we do not believe that selected financial data based on Previous GAAP should be presented in a ''side-by-side'' format with selected financial data based on IFRS, as this could lead to comparison between periods for which financial data is presented on a different basis.

Questions

• Should five years of selected financial data based on U.S. GAAP be required in a separate section of the document, rather than with the IFRS selected data?

• Should we require selected financial data based on Previous GAAP? If so, where should it be located? Should we expressly prohibit a ''side-by-side'' disclosure format for selected financial data based on Previous GAAP and IFRS? Conversely, should we permit or require such a disclosure format? Would inclusion of Previous GAAP selected financial data, whether presented in a ''side-by-side'' format or otherwise, be likely to cause investor confusion regarding the basis of accounting used? If so, how could any confusion or the likelihood of comparison be minimized?

D. Operating and Financial Review and Prospects

Registration statements and annual reports must contain a narrative discussion of the financial condition of the issuer that enables investors to see the company through the eyes of management and provides the context within which the financial statements should be analyzed. This information should describe, in a clear and straightforward manner, the quality and potential variability of the company's earnings and cash flow so that investors can ascertain the likelihood that past performance is indicative of future performance.[32] We are proposing to include in new General Instruction G to Form 20–F an instruction that would clarify how issuers should present this disclosure relating to operating and financial review and prospects.

In providing disclosure under Item 5 of Form 20–F, management should focus on the financial statements from the past two financial years prepared in accordance with IFRS, as well as the reconciliation to U.S. GAAP for the same two financial years. The discussion also should explain any differences between IFRS and U.S. GAAP that are not otherwise discussed in the reconciliation and that the company believes are necessary for an understanding of the financial statements as a whole.[33] Management should not include in this section any discussion relating to financial statements prepared in accordance with Previous GAAP, unless the issuer has elected to include or incorporate by reference such Previous GAAP financial information.

Questions

• Is there additional information that would be useful to investors that should be included in the disclosure of operating and financial review and prospects? If so, what is it?

• Should we require that disclosure of operating and financial review and prospects based on Previous GAAP financial information, if included, refer to the reconciliation to U.S. GAAP? If so, why? How is that information likely to benefit investors? Would requiring that information create undue burdens for issuers?

E. Other Disclosures

1. Business and Derivatives Disclosure

Under Item 4 of Form 20–F, an issuer must provide information about its business operations, the products it makes and the services it provides, and the factors that affect its business. The financial information that is included in response to this requirement is generally based on the primary financial statements of the company.[34] We are proposing to include in new General Instruction G to Form 20–F an instruction that would clarify that for

[29] CESR has recommended a similar approach to the presentation of comparative information prepared on different bases of accounting. See CESR Recommendation.

[30] This accommodation is generally used by foreign private issuers that are registering with the SEC for the first time and in their filings shortly after initial SEC registration, until the registrants develop a five-year history of financial information on a consistent basis.

[31] Information may be incorporated by reference only when the relevant form so allows, and existing rules regarding incorporation by reference shall apply. See Securities Act Rule 411 [17 CFR 230.411] and Exchange Act Rule 12b–23 [17 CFR 240.12b–23].

[32] *See, e.g.,* Release 33–8350 (December 19, 2003) for recent Commission guidance regarding management's discussion and analysis of financial condition and results of operation.

[33] Form 20–F, Instruction 2 to Item 5.

[34] Instruction 1 to Item 4.B notes that information should be provided with reference to the accounting principles used in preparing the primary financial statements, not to U.S. GAAP (assuming the primary financial statements are not in U.S. GAAP).

companies preparing their financial statements under IFRS, the reference to accounting principles in Item 4 would refer to IFRS and to neither Previous GAAP nor U.S. GAAP.

Under Item 11 of Form 20–F, an issuer must provide information about its use of derivatives, providing extensive quantitative and qualitative disclosures about market risk. We are proposing to include in new General Instruction G to Form 20–F an instruction that would clarify that for companies preparing their financial statements under IFRS, information provided in response to this requirement would be based on IFRS.

We request comment on whether the proposed requirement, which clarifies that companies preparing their financial statements under IFRS should also base their Item 4 company information and Item 11 derivatives disclosure on IFRS, is sufficient. If the proposal is not sufficient, we request comment on what additional information related to business operations and the use of derivatives should be required.

2. Disclosure Pursuant to Industry Guides

Companies that are engaged in certain lines of business are subject to various industry guides.[35] In particular, bank holding companies are subject to the special disclosure provisions of Industry Guide 3—Statistical Disclosure by Bank Holding Companies.[36] Industry Guide 3 requires affected companies to provide additional information with respect to the distribution of assets and liabilities, interest rates applicable to assets and liabilities, the investment portfolio, the loan portfolio, and loan loss experience, usually over a three-year or five-year period. In addition, companies with property-casualty insurance reserves are subject to the special disclosure provisions of Industry Guide 6—Disclosures Concerning Unpaid Claims and Claim Adjustment Expenses of Property-Casualty Insurance Underwriters.[37] Industry Guide 6 requires affected companies to disclose additional information that provides a reconciliation of claims reserves over a three-year period and a table showing loss reserve development over a ten-year period.

Foreign banks will frequently have difficulty obtaining certain information to comply with the statistical disclosure requirements of Industry Guide 3, inasmuch as the categories and classifications specified by the guide are heavily influenced by U.S. banking regulation and some categories and classifications may not be sufficient by themselves to permit a complete understanding of a foreign bank's operations. Likewise, foreign insurance companies will often have difficulty obtaining sufficient data regarding property-casualty claim reserves to prepare the loss reserve development table required by Industry Guide 6. In both instances, and especially in the case of initial foreign registrants, the SEC staff has accepted alternative treatments or granted limited accommodations, so long as essential and material information is presented to investors.

The staff is not proposing any specific amendments with respect to information required to be disclosed pursuant to Industry Guides 3 and 6 by a foreign private issuer that changes its basis of accounting to IFRS. We are not aware of any general accommodation that foreign registrants that adopt IFRS and that are subject to these Industry Guides will need under the Guides. The information required by Industry Guide 3 represents specific statistical information that is not defined by GAAP, and therefore the change from Previous GAAP to IFRS for foreign registrants that are subject to Industry Guide 3 should not affect the availability of information required by the Guide or impose significant burdens or expenses on those registrants to provide that information. With respect to Guide 6, although IFRS constitutes a comprehensive basis of accounting, at present there is no standard under IFRS that relates to insurance contracts. Some issuers use home country standards, or, if there are none, they use U.S. GAAP and provide Guide 6 information on that basis.[38] In the staff's experience, some foreign registrants that are subject to Industry Guide 6 already apply U.S. GAAP with respect to their accounting for insurance contracts. First-time adopters similarly may choose to apply U.S. GAAP accounting for insurance contracts in preparing their IFRS financial statements and therefore would be able to continue (if an existing registrant) or begin (if a new registrant) to provide Guide 6 information.

On behalf of the staff, we request comment on whether amendments would be appropriate to address the information required under Industry Guide 3 or Industry Guide 6 in the context of first-time adopters changing their basis of accounting to IFRS. In addition, as it has traditionally done, the SEC staff will consider appropriate accommodations in respect of specific registrants or a class of registrants.

F. Financial Statements and Information for Interim Periods for the Transition Year

Questions relating to the appropriate presentation of financial statements during the financial year in which an issuer first changes its basis of accounting from Previous GAAP to IFRS [39] raise unique issues. During the Transition Year, a foreign issuer will be finalizing the changeover of its internal accounting systems in order to be able to publish financial statements in accordance with IFRS. However, the issuer may not be in a position to publish financial statements that fully comply with IFRS covering interim periods in the Transition Year and comparable periods in the prior year.[40] Even if an issuer were in a position to publish interim period IFRS financial statements, these financial statements would not be comparable to the issuer's previously published annual financial statements prepared in accordance with Previous GAAP.[41]

[35] Industry Guides serve as expressions of the policies and practices of the Division of Corporation Finance. They are of assistance to issuers, their counsel and others preparing registration statements and reports, as well as to the Commission's staff.

[36] 17 CFR 229.801(c) and 802(c). Foreign banks that are registered with the SEC, whether or not they are organized as holding companies, are subject to Industry Guide 3.

[37] 17 CFR 229.801(f) and 802(f). Foreign companies that are registered with the SEC and that have property-casualty insurance reserves are subject to Industry Guide 6.

[38] The IASB has issued an exposure draft that would allow companies to continue their existing accounting practices for insurance contracts, subject to certain limitations, until the IASB has adopted final standards for insurance contracts. See ''Exposure Draft: ED 5 Insurance Contracts,'' ''Draft Implementation Guidance: ED 5 Insurance Contracts,'' and ''Basis for Conclusions on Exposure Draft: ED 5 Insurance Contracts.''

[39] This financial year is referred to as the ''Transition Year.'' For foreign issuers with a calendar year-end that are subject to the EU Regulation, the Transition Year would be the financial year ended December 31, 2005.

[40] Interim financial statements prepared in accordance with IFRS would comply with the requirements of IAS 34. Under that standard, a company must publish either full financial statements that are as complete as annual financial statements, or condensed financial statements that satisfy the conditions in paragraphs 9 and 10 of IAS 34. Those conditions provide that condensed interim financial statements should include, at a minimum, each of the headings and subtotals that were included in the most recent annual financial statements and the selected explanatory notes required by IAS 34. Any other line items or notes should be included if their omission would render the interim financial statements misleading.

[41] In addition, under IFRS 1, paragraph 36, an issuer's first IFRS financial statements must include at least one year of IFRS comparative information. We believe that it is unlikely that foreign issuers will have IFRS financial statements covering two financial years prior to the Transition Year (meaning financial years 2003 and 2004 for a calendar year end issuer as noted in footnote 39).

In registration statements under the Securities Act and the Exchange Act and in prospectuses under the Securities Act, if the document is dated more than nine months after the end of the last audited financial year, foreign private issuers must provide consolidated interim financial statements covering at least the first six months of the financial year and the comparative period for the prior financial year.[42] These unaudited interim period financial statements must be prepared using the same basis of accounting as the audited financial statements contained in the document and include or incorporate by reference a reconciliation to U.S. GAAP.[43]

If the document is dated less than nine months after the last financial year, foreign private issuers are required to include in the registration statement or prospectus any published financial information that is more current than what is required.[44] When this type of information is presented, the issuer must describe any material variations from U.S. GAAP and quantify variations not present in the most recent financial year, but generally need not provide a full reconciliation to U.S. GAAP for interim period non-U.S. GAAP financial information.[45]

Under these provisions, foreign private issuers that are switching to IFRS and are required to present financial statements for an interim period in the Transition Year will present three years of audited financial statements and two years of unaudited interim period financial statements in accordance with Previous GAAP.[46] For example, a foreign private issuer that has a financial year end of December 31 and that is required to switch to IFRS for year 2005 would include or incorporate by reference in a registration statement or prospectus filed during year 2005 audited financial statements for the years ended December 31, 2002, 2003 and 2004 and (when required) unaudited financial statements for the six months ended June 30, 2004 and 2005, all prepared in accordance with Previous GAAP and (when required) containing a reconciliation to U.S. GAAP.[47]

In the situation when a foreign private issuer is required to present interim period financial statements for the Transition Year, the issuer also may have published financial statements covering those current and prior year interim periods in accordance with IFRS. Under current requirements, issuers must include this information in their SEC documents.[48] The issuer also would provide appropriate and prominent disclosure in the documents that the IFRS financial statements are not comparable to Previous GAAP financial statements.

We understand that, under the approach outlined above (which is consistent with our current requirements), foreign private issuers that change to IFRS may be required to maintain their accounts in accordance with Previous GAAP and IFRS and to publish two separate sets of interim period financial statements during the Transition Year. This approach may result in additional burdens being placed on foreign issuers as well as uncertainty among investors with respect to which financial statements to use to assess an issuer's operating results. Below, we ask several questions relating to alternative proposals with respect to interim period financial statements published during the Transition Year.

Questions

- To comply with these requirements, issuers may be required to maintain financial statements prepared in accordance with both Previous GAAP and IFRS for interim periods of the Transition Year. Would it be unduly burdensome to maintain books and records in accordance with both Previous GAAP and IFRS during this time? What costs and other burdens will this impose on issuers? Are companies that are mandated to switch to IFRS prohibited from continuing to publish financial statements prepared in accordance with Previous GAAP during their Transition Year? If so, who or what prohibits it?
- Will foreign issuers be likely to avoid registering securities under the Securities Act and the Exchange Act during the latter months of a Transition Year and early months of the year after in order to avoid being required to include interim financial statements in a disclosure document, and therefore be required to publish interim financial information in accordance with Previous GAAP? How can we reduce any impediment to foreign companies undertaking registered offerings during a Transition Year while ensuring that investors receive clear, sufficient, up-to-date information?
- Are investors likely to be confused with the presentation of interim financial statements using two bases of accounting covering the same periods? If so, what steps could be taken to minimize this confusion?
- As proposed, an issuer must include in its SEC filings both IFRS financial statements and Previous GAAP financial statements for current and prior year interim periods, when both are available. Should we provide issuers with a choice of whether to provide interim financial statements prepared under Previous GAAP or under IFRS, when both are available?
- When the Transition Year is year 2004 or 2005, in lieu of requiring both Previous GAAP and available IFRS interim financial statements for two years, would it be preferable to require audited financial statements prepared in accordance with IFRS for the last full financial year, with unaudited IFRS financial statements for interim periods in both years?[49] This approach would not be in technical compliance with IFRS 1, which requires that first-time adopters include one year of comparative information under IFRS.[50] Should we permit audit reports that are qualified as to this provision of IFRS 1? Should we make similar accommodations when an issuer's Transition Year is later than year 2005? Why or why not?
- When the Transition Year is year 2004 or 2005, would it be appropriate instead to require three years of audited financial statements prepared in accordance with Previous GAAP and unaudited financial statements prepared in accordance with IFRS for interim periods in two years with the same level of disclosure as in annual financial statements?[51] Would issuers be likely to prepare full IFRS financial statements for interim periods? If not, why not? Should an issuer's first set of IFRS financial statements filed with the SEC

[42] Form 20–F, Item 8.A.5. None of the discussion in this subsection applies to disclosure included in Reports on Form 6–K that are furnished to the Commission, except to the extent those reports are incorporated by reference into a registration statement or prospectus.

[43] Form 20–F, Item 17(c).

[44] Form 20–F, Item 8.A.5.

[45] Form 20–F, Instruction 3 to Item 8.A.5.

[46] In addition, the disclosure relating to Operating and Financial Review and Prospects in accordance with Item 5 of Form 20–F will relate to Previous GAAP financial statements.

[47] Foreign private issuers may also present financial statements for interim periods longer than six months, for example nine months.

[48] Form 20–F, Instruction 3 to Item 8.A.5.

[49] For example, for a calendar year company that adopts IFRS in year 2005 this would mean audited IFRS financial statements for year 2004 and unaudited IFRS financial statements for interim periods in years 2004 and 2005.

[50] See IFRS 1, paragraph 36.

[51] For example, for a calendar year company that adopts IFRS in year 2005 this would mean audited Previous GAAP financial statements for years 2002, 2003 and 2004 with unaudited IFRS financial statements for interim periods in years 2004 and 2005.

be audited if they are for two years of interim periods? Why or why not? How would issuers assess and prepare disclosure of their operating and financial review and prospects? What other specific issues would companies face in presenting financial statements under both Previous GAAP and IFRS? How could those issues be addressed? Should we make similar accommodations when an issuer's Transition Year is later than year 2005?

III. Disclosures About First-Time Adoption of IFRS

As proposed, the amendments to Form 20–F include certain disclosure requirements that apply to all first-time adopters of IFRS regardless of the year in which they change their basis of accounting. These requirements relate to the issuer's reliance on any of the exceptions to the general restatement and measurement principles allowed under IFRS 1 and to the reconciliation of Previous GAAP financial statements to IFRS.

A. Disclosure About Exceptions to IFRS

IFRS 1 establishes both elective and mandatory exceptions to the principle that a first-time adopter must comply with each IFRS effective at the reporting date for its first IFRS financial statements.[52] Paragraphs 13 through 25 of IFRS 1 set out the elective exceptions, and paragraphs 26 through 34 set out the mandatory exceptions. The elective exceptions, which a company may elect to use individually, relate to business combinations (paragraph 15); fair value or revaluation as deemed cost (paragraphs 16–19); employee benefits (paragraph 20); cumulative translation differences (paragraphs 21 and 22); compound financial instruments (paragraph 23); and assets and liabilities of subsidiaries, associates and joint ventures (paragraphs 24 and 25). IFRS 1 does not permit a first-time adopter to apply these elective exceptions to other items by analogy.

The mandatory exceptions prohibit retroactive application of IFRS to three important items: derecognition of financial instruments and financial liabilities (paragraph 27); hedge accounting (paragraphs 28–30); and information to be used in preparing IFRS estimates (paragraphs 31–34).

We are proposing to amend Item 5 of Form 20–F in order to add an instruction that would require an issuer to discuss its application of the exceptions under IFRS 1. Under the proposal, any issuer relying on any of the elective or mandatory exceptions from IFRS must include in the discussion of its operating and financial review and prospects based on its IFRS financial statements provided in response to Item 5 of Form 20–F detailed discussion of each exception used and the circumstances that gave rise to its use. In this discussion, the issuer should:

- Identify the items or class of items to which the exception was applied (*e.g.*, specific business combination, asset or category of asset, pension plan, financial instrument, etc.); and
- Describe what accounting principle was used and how it was applied (*e.g.*, if a business combination was treated as a pooling based on Previous GAAP that would have been treated as a purchase under IAS 22).

The issuer would be required to provide an explanation of the significance of each exception to the company's financial condition and to the changes in its financial condition and results of operations. Where material, the company also would have to identify the line items in the financial statements that were affected by the exceptions from IFRS.

The discussion of each elective exception used would include, where material, qualitative disclosure of the impact on financial condition and changes in the company's financial condition and results of operation that the alternatives would have had. When relying on a mandatory exception, the issuer must describe the exception and state that it complied.

Under the proposal, a first-time adopter that relies on any of the elective or mandatory exceptions to the general restatement and measurement principles that IFRS allows also would be required to identify those exceptions in the notes to its audited financial statements.

Questions

- Should first-time adopters be required to provide the additional information proposed under Item 5 of Form 20–F? Will this information be useful for investors, and will it be unduly burdensome for issuers to provide? In either case, commenters should provide supporting information relating to the utility of the information (or lack thereof) and the costs and difficulties associated with disclosing this information.
- Should issuers be required to disclose more information with respect to the mandatory or elective exceptions? If so, what information would that be, what usefulness would this information have to investors, and what burdens would be imposed on issuers to disclose this information?
- Have we given sufficient guidance with respect to the information to be disclosed under the proposed amendment to Item 5? Should there be greater specificity relating to the required information? Are the proposals regarding the information to be provided in Item 5 and in the notes to the primary financial statements about IFRS exceptions sufficiently clear so as to avoid duplicative disclosure? If not, what further clarification is necessary?

B. Reconciliation From Previous GAAP

All first-time adopters are required under IFRS 1 to include in the notes to audited financial statements a reconciliation from Previous GAAP to IFRS that gives ''sufficient data to enable users to understand the material adjustments to the balance sheet and income statement,'' and if presented under Previous GAAP, the cash flow statement.[53] We are proposing to amend Item 8 of Form 20–F to add an instruction requiring a similar level of information in the reconciliation of Previous GAAP to IFRS that first-time adopters must include in their SEC filings. This reconciliation is to be included as a note to the audited financial statements with respect to the first financial year for which the issuer adopts IFRS.[54]

In proposing that companies must provide in their reconciliation information sufficient to allow investors to understand the material adjustments to the balance sheet and income statement, and, if presented under Previous GAAP, to the cash flow statement, we are not proposing specific form or content requirements. A reconciliation following Example 11 provided in paragraph IG63 of the Implementation Guidance to IFRS 1 (''IG63''), which quantifies balance sheet and income statement captions at a level of detail comparable to that required by Article 10 of Regulation S–X, would meet the required level of information under the proposed amendment to Item 8. IG63 is not mandatory for all first-time adopters. We believe, however, that following the example reconciliation that it provides would assure that first-time adopters that are registered with the SEC provide a comparable level of information with respect to the reconciliation. Companies may also comply with the proposed

[52] This principle is set forth in IFRS 1, IN2.

[53] IFRS 1, paragraph 40.

[54] For example, a first-time adopter with a financial year-end of December 31, 2005 would include the reconciliation as part of the financial statements contained in the annual report on Form 20–F for that year.

amendment to Item 8 in other ways, for example by providing a reconciliation that satisfies the requirements of Item 17 of Form 20–F. There may be other alternative formats that are developed as large numbers of companies begin to apply IFRS and IFRS 1.

Questions

- Should we specify the form and content of the reconciliation from Previous GAAP to IFRS? For example, should we require that the information included in the reconciliation be similar in form and content to that in the example provided in IG63? Should we require a level of content different from that set out in IG63? If so, what level of information would be appropriate?
- Would providing a reconciliation from Previous GAAP to IFRS that is substantially similar in form and content to the example set forth in IG63 as best practice be unduly burdensome to issuers? If so, what specific difficulties would issuers face in providing that level of information? How could they be addressed?
- Would investors find the reconciliation information as proposed more useful in comparing different registrants than information required under IFRS alone? If not, why not? What additional information should be required, if any?

IV. General Request for Comments

We request and encourage any interested persons to submit comments regarding:

- the proposed changes that are the subject of this release,
- additional or different changes, or
- other matters that may have an effect on the proposals contained in this release.

We are particularly interested in commenter views on whether all or part of these rules should ''sunset'' after a particular period of time. Specifically, will General Instruction G be useful or relevant three years after the year 2007 transition to IFRS is complete? If we were to automatically delete the provision, should the time period be longer or shorter?

We request comment from the point of view of registrants, investors, accountants, and other market participants. In addition to the changes proposed in this release, we also solicit comments related to whether and how industry guide disclosure requirements should be revised for first-time adopters to whom the proposed accommodation would apply. With regard to any comments, we note that such comments are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

V. Paperwork Reduction Act

A. Background

The proposed amendments affect Form 20–F, which contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[55] We are submitting the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[56] The titles for the collections of information are:

(1) ''Form 20–F'' (OMB Control No. 3235–0288);

(2) ''Form F–1'' (OMB Control No. 3235–0258);

(3) ''Form F–2'' (OMB Control No. 3235–0257);

(4) ''Form F–3'' (OMB Control No. 3235–0256); and

(5) ''Form F–4'' (OMB Control No. 3235–0325).

These forms were adopted pursuant to the Securities Act and Exchange Act and set forth the disclosure requirements for annual reports and registration statements filed by foreign private issuers to ensure that investors are informed. The hours and costs associated with preparing, filing and sending these forms constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The proposed amendment, if adopted, would add a new General Instruction G to Form 20–F to permit an eligible foreign private issuer to file two years rather than three years of statements of income, changes in shareholders' equity and cash flows prepared in accordance with IFRS. The proposal also would affect the selected financial data, the operating and financial review and prospects disclosure, interim financial information, and other related disclosure that eligible issuers would provide. In particular, so as to provide three years of information prepared on a consistent basis of accounting, the proposed amendment requires companies to present condensed U.S. GAAP financial information in a level of detail consistent with that for interim financial statements required by Article 10 of Regulation S–X. These amendments would be collections of information for purposes of the Paperwork Reduction Act. The amendments, if adopted, also would require all first-time adopters of IFRS to provide certain disclosure relating to exceptions from IFRS upon which they relied. They also would clarify the level of information required in the reconciliation to IFRS of financial statements prepared in accordance with Previous GAAP. For purposes of this Paperwork Reduction Analysis, these proposed amendments, if adopted, would result in an increase in the hour and cost burden calculations. As discussed in the cost-benefit analysis in Section VI, however, we believe this proposed amendment would eliminate potential burdens and costs for foreign issuers that adopt IFRS for the first time and would benefit investors by clarifying financial disclosure.[57] The disclosure will be mandatory. There would be no mandatory retention period for the information disclosed, and responses to the disclosure requirements would not be kept confidential.

For purposes of the Paperwork Reduction Act, we estimate that the one-time incremental increase in the paperwork burden for all first-time adopters of IFRS prior to 2007 would be approximately 11,370 hours of company time and approximately $10,231,200 for the services of outside professionals.[58] We estimate that the one-time incremental increase in the paperwork burden for all first-time adopters of IFRS after that period would be approximately 5,685 hours of company time and approximately $5,115,600 for the services of outside professionals. We estimated the average number of hours

[55] 44 U.S.C. 3501 *et seq.*

[56] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[57] Because the current PRA estimates for Forms 20–F, F–1, F–2, F–3 and F–4 do not include an estimate of the burden of preparing three years of financial statements in accordance with IFRS during a company's transition to IFRS, our estimate of the impact of our rule changes does not include any reduction for not having to prepare the third year of financial statements in accordance with IFRS.

[58] As discussed below in Sections V.B and V.C, we estimate that the proposed accommodation (as described in Section II, above) will lead to a one-time increase of 2 percent in the total number of burden hours per response, and that the proposed disclosures about the first-time adoption of IFRS (as described in Section III, above) will lead to a one-time increase of an additional 2 percent in the total number of burden hours per response. Accordingly, a total one-time increase of 4 percent in the number of burden hours per response will be borne by companies that switch to IFRS for a financial year beginning no later than January 1, 2007. For companies that adopt IFRS for the first time in a later financial year, only the 2 percent increase associated with the proposed disclosure requirements described in Section III of this release will apply. For convenience, the estimated PRA hour burdens have been rounded to the nearest whole number, and the estimated PRA cost burdens have been rounded to the nearest $10.

each entity spends completing the forms and the average hourly rate for outside professionals. That estimate includes the time and the cost of in-house preparers, reviews by executive officers, in-house counsel, outside counsel, independent auditors and members of the audit committee.[59]

B. Burden and Cost Estimates Related to the Proposed Accommodation

1. Form 20–F

We estimate that currently foreign private issuers file 1,194 Form 20–Fs each year. We also estimate that foreign private issuers incur 25% of the burden required to produce the Form 20–Fs resulting in 769,826 annual burden hours incurred by foreign private issuers out of a total of 3,079,304 annual burden hours. Thus, we estimate that 2,579 total burden hours per response are currently required to prepare the Form 20–F. We further estimate that outside professionals account for 75% of the burden to produce the Form 20–Fs at an average cost of $300 per hour for a total cost of $692,843,400.

We estimate that currently approximately 35% of the companies that file Form 20–F will be impacted by the proposal.[60] We expect that, if adopted, the proposed amendment would cause 417 foreign private issuers to have increased burden hours. We estimate that for each of the companies affected by the proposal, there would occur an increase of 2 percent (52 hours) in the number of burden hours required to prepare their Form 20–F, for a total increase of 21,684 hours. We expect that foreign private issuers would incur 25% of these increased burden hours (5,421 hours). We further expect that outside firms would incur 75% of the increased burden hours (16,263 hours) at an average cost of $300 per hour for a total of $4,878,900 in increased costs.

Thus, we estimate that the proposed amendment to Form 20–F would increase the annual burden incurred by foreign private issuers in the preparation of Form 20–F to 775,247 burden hours. We further estimate that the proposed amendment would increase the total annual burden associated with Form 20–F preparation to 3,100,988 burden hours, which would increase the average number of burden hours per response to 2,597. We further estimate that the proposed amendment would increase the total annual costs attributed to the preparation of Form 20–F by outside firms to $697,722,300.

2. Form F–1

We estimate that currently foreign private issuers file 43 registration statements on Form F–1 each year. We also estimate that foreign private issuers incur 25% of the burden required to produce a Form F–1 resulting in 22,860 annual burden hours incurred by foreign private issuers out of a total of 91,440 annual burden hours. Thus, we estimate that 2,127 total burden hours per response are currently required to prepare a registration statement on Form F–1. We further estimate that outside professionals account for 75% of the burden to produce a Form F–1 at an average cost of $300 per hour for a total cost of $20,574,000.

We estimate that currently approximately 30% of the companies that file registration statements on Form F–1 will be impacted by the proposal.[61] We expect that, if adopted, the proposed amendment would cause 13 foreign private issuers to have more burden hours. We estimate that for each of the companies affected by the proposal, there would occur an increase of 2 percent (43 hours) in the number of burden hours required to prepare their registration statements on Form F–1, for a total increase of 559 hours. We expect that foreign private issuers would bear 25% of these increased burden hours (140 hours). We further expect that outside firms would benefit from 75% of the reduced burden hours (420 hours) at an average cost of $300 per hour for a total of $126,000 in increased costs.

Thus, we estimate that the proposed amendment to Form F–1 would increase the annual burden incurred by foreign private issuers in the preparation of Form F–1 to 23,000 burden hours. We also estimate that the proposed amendment would increase the total annual burden associated with Form F–1 preparation to 92,000 burden hours, which would increase the average number of burden hours per response to 2,140. We further estimate that the proposed amendment would increase the total annual costs attributed to the preparation of Form F–1 by outside firms to $20,700,000.

3. Form F–2

We estimate that currently foreign private issuers file three registration statements on Form F–2 each year. We also estimate that foreign private issuers incur 25% of the burden required to produce a Form F–2 resulting in 699 annual burden hours incurred by foreign private issuers out of a total of 2,796 annual burden hours. Thus, we estimate that 932 total burden hours per response are currently required to prepare a registration statement on Form F–2. We further estimate that outside professionals account for 75% of the burden to produce a Form F–2 at an average cost of $300 per hour for a total cost of $629,100.

Based on a review of the three registration statements on Form F–2 that were filed between January 1 and December 31, 2002, we expect that, if adopted, the proposed amendments would affect one company. We estimate that there would occur an increase of 2 percent (19 hours) in the number of burden hours required to prepare a registration statement on Form F–2. We expect that the foreign private issuer would bear 25% of these increased burden hours (5 hours). We further expect that outside firms would bear 75% of the increased burden hours (15 hours) at an average cost of $300 per hour, for a total of $4,500 in increased costs.

Thus, we estimate that the proposed amendment to Form 20–F would increase the annual burden incurred by foreign private issuers in preparation of Form F–2 to 704 burden hours. We further estimate that the proposed amendment would increase the total annual burden associated with Form F–2 preparation to 2,816 hours, which would increase the average number of burden hours per response to 939. We further estimate that the proposed amendment would increase the total annual costs attributed to the

[59] In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of $300 as the cost of outside professionals that assist companies in preparing these disclosures. For Securities Act registration statements, we also consider additional reviews of the disclosure by underwriter's counsel and underwriters.

[60] This figure is based on our estimate of the ratio of the actual number of foreign private issuers that (1) are incorporated in countries that will require or permit the use of IFRS beginning in year 2005, (2) are incorporated in countries that presently permit but do not require the use of IFRS, (3) have filed either an annual report and/or a registration statement on Form 20–F between January 1 and December 31, 2002; and (4) appear current with their reporting obligations under the Exchange Act as of December 31, 2002, to the actual number of the applicable forms that were filed between January 1 and December 1, 2002. For purposes of this estimate we have excluded the number of foreign private issuers that we estimate currently include IFRS financial statements in their SEC filings (50).

[61] This figure is based on our estimate of the ratio of the number of foreign private issuers that (1) are incorporated in countries that will require or permit the use of IFRS beginning in year 2005, (2) are incorporated in countries that presently permit but do not require the use of IFRS, (3) have filed a Form F–1 between January 1 and December 31, 2002; and (4) appear current with their reporting obligations under the Exchange Act as of December 31, 2003, to the actual number of registration statements on Form F–1 that were filed between January 1 and December 1, 2002.

preparation of Form F–2 by outside firms to $633,600.

4. Form F–3

We estimate that currently foreign private issuers file 120 registration statements on Form F–3 each year. We also estimate that foreign private issuers incur 25% of the burden required to produce a Form F–3 resulting in 4,980 annual burden hours incurred by foreign private issuers out of a total of 19,920 annual burden hours. Thus, we estimate that 166 total burden hours per response are currently required to prepare a registration statement on Form F–3. We further estimate that outside professionals account for 75% of the burden to produce a Form F–3 at an average cost of $300 per hour for a total cost of $4,482,000.

We estimate that currently approximately 45% of the companies that file registration statements on Form F–3 will be impacted by the proposal.[62] We expect that, if adopted, the proposed amendment would cause 54 foreign private issuers to have more burden hours. We estimate that for each of the companies affected by the proposal, there would be an increase of 2 percent (3 hours) in the number of burden hours required to prepare their registration statements on Form F–3, for a total increase of 162 hours. We expect that foreign private issuers would bear 25% of this increased burden hours (41 hours). We further expect that outside firms would bear 75% of the increased burden hours (120 hours) at an average cost of $300 per hour for a total of $36,000 in increased costs.

Thus, we estimate that the proposed amendment to Form 20–F would increase the annual burden incurred by foreign private issuers in the preparation of Form F–3 to 5,021 burden hours. We further estimate that the proposed amendment would increase the total annual burden associated with Form F–3 preparation to 20,084 burden hours, which would increase the average number of burden hours per response to 167. We further estimate that the proposed amendment would increase the total annual costs attributed to the preparation of Form F–3 by outside firms to $4,518,000.

5. Form F–4

We estimate that currently foreign private issuers file 61 registration statements on Form F–4 each year. We also estimate that foreign private issuers incur 25% of the burden required to produce a Form F–4 resulting in 20,267 annual burden hours incurred by foreign private issuers out of a total of 81,068 annual burden hours. Thus, we estimate that 1,323 total burden hours per response are currently required to prepare a registration statement on Form F–4. We further estimate that outside professionals account for 75% of the burden to produce a Form F–4 at an average cost of $300 per hour for a total cost of $18,240,300.

We estimate that currently approximately 20% of the companies that file registration statements on Form F–4 will be impacted by the proposal.[63] We expect that, if adopted, the proposed amendment would cause 12 foreign private issuers to have more burden hours. We estimate that for each of the companies affected by the proposal, there would occur an increase of 2 percent (26 hours) in the number of burden hours required to prepare their registration statements on Form F–4, for a total increase of 312 hours. We expect that foreign private issuers would bear 25% of these increased burden hours (78 hours). We further expect that outside firms would bear 75% of the increased burden hours (234 hours) at an average cost of $300 per hour for a total of $70,200 in increased costs.

Thus, we estimate that the proposed amendment to Form 20–F would increase the annual burden incurred by foreign private issuers in the preparation of Form F–4 to 20,345 burden hours. We further estimate that the proposed amendment would increase the total annual burden associated with Form F–4 preparation to 81,380 burden hours, which would increase the average number of burden hours per response to 1,334. We further estimate that the proposed amendment would increase the total annual costs attributed to the preparation of Form F–4 by outside firms to $18,310,500.

[62] This figure is based on our estimate of the ratio of the number of foreign private issuers that (1) are incorporated in countries that will require or permit the use of IFRS beginning in year 2005, (2) are incorporated in countries that presently permit but do not require the use of IFRS, (3) have filed a Form F–3 between January 1 and December 31, 2002; and (4) appear current with their reporting obligations under the Exchange Act as of December 31, 2003, to the actual number of registration statements on Form F–3 that were filed between January 1 and December 1, 2002.

[63] This figure is based on our estimate of the ratio of the number of foreign private issuers that (1) are incorporated in countries that will require or permit the use of IFRS beginning in year 2005, (2) are incorporated in countries that presently permit but do not require the use of IFRS, (3) have filed a Form F–4 between January 1 and December 31, 2002; and (4) appear current with their reporting obligations under the Exchange Act as of December 31, 2003, to the actual number of registration statements on Form F–4 that were filed between January 1 and December 1, 2002.

C. Burden and Cost Estimates Related to the Disclosure About First-Time Adoption of IFRS

The proposed requirements that will apply to all first-time adopters of IFRS regardless of the year in which they change their basis of accounting relate to the issuer's reliance on any of the exceptions from IFRS and to the reconciliation of Previous GAAP financial statements to IFRS. We estimate that these requirements, if adopted, would cause a one-time increase of 2 percent in the number of burden hours required to prepare Forms 20–F, F–1, F–2, F–3 and F–4, respectively. We further estimate that the same number of companies would be affected by these amendments as by the proposed amendments related to the accommodation. Accordingly, the burden and cost estimates related to the proposed disclosure about first-time adoption of IFRS will be the same as the burden and cost estimates related to the proposed accommodation. We therefore refer to the calculations provided above in Section V.B. As with the burden increases related to the accommodation, they will be a one-time increase that a company will incur in the year in which it adopts IFRS as its basis for accounting.

D. New Burden Estimates

Based on the preceding analysis and assuming that the number of respondents for each of the affected forms remains unchanged, the 2 percent burden increase due to the proposed accommodation and the further 2 percent increase due to the proposed disclosure requirements for all first-time IFRS adopters will, together, increase the total burden estimates for companies from 769,826 hours to 780,668 for Form 20–F (an increase from 2,579 hours to 2,615 hours per form), from 22,860 hours to 23,140 hours for Form F–1 (an increase from 2,127 hours to 2,153 hours per form), from 699 hours to 709 hours for Form F–2 (an increase from 932 hours to 946 hours per form), from 4,980 hours to 5,062 for Form F–3 (an increase from 166 hours to 168 hours per form), and from 20,267 hours to 20,423 hours for Form F–4 (an increase from 1,323 hours to 1,345 hours per form). As discussed above in footnote 58, after year 2007 the 2 percent burden increase from the proposed accommodation will no longer apply and only the 2 percent increase due to the proposed disclosure requirements for all first-time IFRS adopters will remain.

E. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to:

- 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;
- evaluate the accuracy of our estimates of the burden of the proposed collections of information;
- determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;
- evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and
- evaluate whether the proposed amendments will have any effects on any other collections of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–13–04. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7–13–04, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

VI. Cost-Benefit Analysis

A significant number of foreign private issuers that file registration statements or annual reports with the SEC will adopt IFRS as their basis for accounting, either voluntarily or pursuant to regulatory requirement. The amendments to Form 20–F proposed in this release seek to facilitate the transition of those foreign companies to IFRS and to improve the clarity of their financial disclosure. Currently, Form 20–F requires that foreign private issuers provide three years of audited financial statements prepared using a consistent basis of accounting. Although we are not proposing to require the use of IFRS in SEC filings, as an accommodation to foreign companies that adopt IFRS for the first time during a financial year that begins no later than January 1, 2007, we are proposing to allow them to omit IFRS financial statements for the earliest of the three years that would otherwise be required under our rules, with appropriate related disclosure. Current requirements for a reconciliation to U.S. GAAP will remain in place.

We also are proposing additional requirements for all first-time IFRS adopters regarding disclosure of exceptions to IFRS and clarifications regarding reconciliation from Previous GAAP to IFRS. We are sensitive to the costs and benefits of our proposal, which we discuss below.

A. Expected Benefits

The proposed accommodation is intended to benefit eligible issuers by relieving them of the burden and difficulties related to restating financial statements for a prior financial year using IFRS standards that were not finalized during the period to which they would have to be applied. We are concerned that retroactive application of IFRS for the third year back would lead to uncertain results, and cause potential investor confusion. The number of companies that will be required to switch their basis of accounting to IFRS and the additional companies that switch to IFRS voluntarily also will compound the difficulties that both companies and the accounting profession ordinarily face when recasting prior reporting periods under new standards. The proposed accommodation is intended to benefit those parties by minimizing those difficulties. The proposed accommodation also is intended to benefit investors by improving the clarity and quality of financial disclosure required of companies that adopt IFRS for the first time.

The proposed amendments that, if adopted, would require from all first-time IFRS adopters detailed disclosure related to their reliance on voluntary and mandatory exceptions to IFRS are intended to benefit investors by providing clarification of the effect that use of those exceptions had on the company's financial condition. This disclosure would appear in the company's required discussion of its operating and financial review and prospects.

We also are proposing amendments to Form 20–F that, if adopted, would clarify the level of information required in the reconciliation to IFRS of financial statements prepared in accordance with Previous GAAP. This clarification is intended to benefit investors by providing a comparable level of information in that reconciliation to enable readers to understand any material adjustments to the financials statements.

B. Expected Costs

The proposed amendments to Form 20–F are likely to result in some costs to companies that are first-time adopters of IFRS, although we anticipate that these costs are justified by the reduced burden. We believe that the principal cost to issuers relying on the proposed accommodation will relate to the proposed requirement that they include three years of condensed U.S. GAAP financial information. Based on our assumption that most companies will already have this information available, however, we believe that the additional cost of including it in their SEC filings will be minimal. The other proposed amendments relating to the accommodation for first-time IFRS adopters are intended to clarify how information required under existing rules should be presented when based on primary financial statements prepared in accordance with IFRS. Therefore, these elements of the proposed accommodation should add little extra burden to companies that rely on it.

We note that the proposed requirements relating to interim financials statements do not vary significantly from existing requirements. They may, however, create additional costs for companies that may be required to maintain financial statements prepared in accordance with both Previous GAAP and IFRS for interim periods during the year in which they switch to IFRS. We request comment on the nature and extent of these potential costs.

Other amendments proposed in this release will, if adopted, apply to all first-time IFRS adopters. These proposals relate to the reconciliation from Previous GAAP to IFRS and to the use of any exceptions to IFRS. Because reconciliation from Previous GAAP to IFRS is required under the transition rules in IFRS 1, we do not anticipate that our proposed standard clarifying the level of information that the

reconciliation should contain will result in an increased cost to companies. We do recognize that the proposals relating to the use of IFRS exceptions, if adopted, will require additional disclosure and, consequently, an increase in costs for companies that would be required to provide that disclosure. We request comment on the nature and extent of that cost increase.

The proposed accommodation may involve some costs to investors, who would not have available the third year of financial statements prepared under IFRS. We believe that this cost is minimal, however, based on our assumption that the results of retroactive application of IFRS for the third financial year back may be uncertain and confusing. The requirement that companies relying on the proposed accommodation include three years of condensed U.S. GAAP information is intended to reduce any cost to investors by ensuring that filings contain three years of information prepared on a consistent basis of accounting. The proposed accommodation also may create a competitive disadvantage to companies that are not eligible to rely on it, including domestic companies and foreign companies that would not be considered first-time adopters of IFRS under the amendment. Most of these costs are difficult to quantify. We request comment on these potential costs.

C. Comment Solicited

We request your views on the costs and benefits described above, particularly with regard to the questions raised after Sections II.A–F and Section III, as well as on any other costs and benefits that could result from adoption of the proposed amendment to Form 20–F. For example, are we correct in our assumptions relating to the potential costs and difficulties that companies may face when they adopt IFRS? What benefits may be created by encouraging more companies to adopt IFRS as their basis of accounting, and for whom? What is the likely economic impact of these or other costs or benefits? Can they be quantified in any meaningful way? If so, how and what conclusions should be drawn? The Commission also requests any supporting data to quantify the expected costs and the value of the anticipated benefits.

VII. Regulatory Flexibility Act Certification

The Commission hereby certifies pursuant to 5 U.S.C. 605(b), that the amendment to Form 20–F under the Exchange Act contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposal would add a new General Instruction to Form 20–F that would permit eligible foreign private issuers to file two years rather than three years of statements of income, changes in shareholders' equity and cash flows prepared in accordance with IFRS, with appropriate related disclosure. The amendments, if adopted, also would require all first-time adopters to provide information relating to exceptions from IFRS on which they relied and to satisfy a required level of information in their reconciliation to IFRS from Previous GAAP. Based on an analysis of the language and legislative history of the Act, Congress does not appear to have intended the Regulatory Flexibility Act to apply to foreign issuers. For this reason, the proposed amendment should not have a significant economic impact on a substantial number of small entities.

We solicit written comments regarding this certification. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VIII. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[64] a rule is ''major'' if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- A significant adverse effect on competition, investment or innovation.

We request comment on the potential impact of the proposed amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views if possible.

Section 2(b) of the Securities Act[65] and Section 3(f) of the Exchange Act[66] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act[67] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The purpose of this proposed amendment to Form 20–F is to provide an accommodation to companies that switch to IFRS during a financial year beginning no later than January 1, 2007, and have not published IFRS financial statements for an earlier financial year. This proposal is designed to increase efficiency, competition and capital formation by alleviating the burden and cost that eligible companies would face if required to recast under IFRS their results for the third financial year for inclusion in annual reports and registration statements filed with us. Because those companies may find it difficult to recast their financial results under IFRS for the third financial year, we believe that the proposed amendment is likely to promote market efficiency by eliminating financial disclosure that would be costly to produce and of questionable value. As a result of the more reliable disclosure under the proposed amendment, we believe that investors may be able to make more informed investment decisions and that capital may be allocated on a more efficient basis.

The proposed amendments also would require all foreign companies that change their basis of accounting to IFRS to provide information relating to exceptions to IFRS on which they relied and to satisfy a required level of information in their reconciliation to IFRS from Previous GAAP. We believe that this is likely to increase efficiency, competition and capital formation by enabling investors to base their investment decisions on a better understanding of the financial information of those companies, leading to a more efficient allocation of capital.

We solicit comment on these matters as they regard the proposed amendments. For example, would the proposals have an adverse effect on competition that is neither necessary nor appropriate in furtherance of the purposes of the Exchange Act? For example, would the proposals create an adverse competitive effect on U.S. issuers or on foreign issuers that could not rely on the accommodation? Would the proposed amendments, if adopted, promote efficiency, competition and capital formation? Commenters are

[64] Pub. L. No. 104–121, Title 2, 110 Stat. 857 (1996).

[65] 15 U.S.C. 77b(b).

[66] 15 U.S.C. 78c(f).

[67] 15 U.S.C. 78w(a)(2).

requested to provide empirical data and other factual support for their views, if possible.

IX. Statutory Basis

We propose the amendment to Exchange Act Form 20–F pursuant to Sections 6, 7, 10, and 19(a) of the Securities Act of 1933 as amended, and Sections 3, 12, 13, 15, 23 and 36 of the Securities Exchange Act of 1934.

Text of Proposed Amendments

List of Subjects in 17 CFR Part 249

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, the Commission proposes to amend Title 17, chapter II of the Code of Federal Regulations as follows:

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a, *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Amend Form 20–F (referenced in § 249.220f) by adding General Instruction G, Instruction 4 to Item 5, and Instruction 3 to Item 8 to read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

Registration Statement pursuant to Section 12(b) or (g) of the Securities Exchange Act of 1934.

* * * * *

General Instructions

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G. Change to International Financial Reporting Standards

(a) *Omission of Certain Required Financial Statements.* If the company changes the body of accounting principles used in preparing its financial statements presented pursuant to Item 8.A.2 of Form 20–F (''Item 8.A.2'') to the International Financial Reporting Standards (''IFRS'') published by the International Accounting Standards Board, the company may omit the earliest of the three years of audited financial statements required by Item 8.A.2 if the company satisfies the conditions set forth in this instruction. For purposes of this instruction, the term ''financial year'' refers to the first financial year beginning on or after January 1 of the same calendar year.

(b) *Applicable Documents.* This instruction shall be available only for the following registration statements and annual reports:

(1) *Registration statements.* This instruction shall be available for registration statements if: (A) the company's most recent audited financial statements required by Item 8.A.2 are for a financial year that begins no later than January 1, 2007; (B) prior to the company's publication of audited financial statements for that financial year, the company had not published audited financial statements prepared in accordance with IFRS for an earlier financial year; and (C) the audited financial statements for the company's most recent financial year for which audited financial statements are required by Item 8.A.2 are prepared in accordance with IFRS.

(2) *Annual reports.* This instruction shall be available for annual reports if: (A) the annual report relates to a financial year that begins no later than January 1, 2007; (B) prior to the company's publication of audited financial statements for that financial year, the company had not published audited financial statements prepared in accordance with IFRS for any earlier financial year; and (C) the audited financial statements for the company's financial year to which the annual report relates are prepared in accordance with IFRS.

(c) *Selected Financial Data.* The selected historical financial data required pursuant to Item 3.A of Form 20–F shall be based on financial statements prepared in accordance with IFRS and shall be presented for the two most recent financial years. The company shall present selected historical financial data in accordance with U.S. GAAP for the five most recent financial years, except as the company is otherwise permitted to omit U.S. GAAP information for any of the earliest of the five years pursuant to the Instruction to Item 3.A of Form 20–F.

(d) *Information on the Company.* The reference in Item 4.B of Form 20–F to ''the body of accounting principles used in preparing the financial statements'' means IFRS and not the basis of accounting that the company previously used (''Previous GAAP'') or accounting principles used only to prepare the U.S. GAAP reconciliation.

(e) *Operating and Financial Review and Prospects.* The company shall present the information required pursuant to Item 5. The discussion should focus on the financial statements for the two most recent financial years prepared in accordance with IFRS. The company should refer to the reconciliation to U.S. GAAP for those years and discuss any aspects of the differences between IFRS and U.S. GAAP, not otherwise discussed in the reconciliation, that the company believes are necessary for an understanding of the financial statements as a whole. No part of the discussion should relate to financial statements prepared in accordance with Previous GAAP.

(f) *Financial Information.* With respect to the financial information required by Item 8.A, all instructions contained in Item 8, including the instruction requiring audits in accordance with U.S. generally accepted auditing standards, shall apply. A company that provides information that responds to Item 8.A.5 of Form 20–F for its 2005 financial year shall also include its published interim financial information prepared in accordance with IFRS.

(g) *Quantitative and Qualitative Disclosures About Market Risk.* Information in the document that responds to Item 11 of Form 20–F shall be presented on the basis of IFRS.

(h) *Financial Statements.* The document shall include financial statements that comply with Item 17 or 18 of Form 20–F as follows:

(1) *Financial Statements in accordance with IFRS.* The company may omit the earliest of the three years of financial statements required by Item 8.A.2.

(2) *U.S. GAAP Information.* (A) The U.S. GAAP reconciliation required by Item 17(c) or 18 shall relate to the same periods covered by the financial statements prepared in accordance with IFRS; (B) the audited financial statements included pursuant to Instruction G.h.1 above shall contain, in addition to the reconciliation to U.S. GAAP, condensed financial information prepared in accordance with U.S. GAAP for the three most recent financial years. The form and content of this financial information shall be in a level of detail substantially similar to that required by Article 10 of Regulation S–X.

Instructions: 1. Condensed financial information prepared in accordance with U.S. GAAP provided in response to Instruction G.h.2.B shall contain income statements and balance sheets. Condensed cash flow statements prepared in accordance with U.S. GAAP shall not be required under this instruction, nor does this instruction affect the number of years for which a company must provide a balance sheet prepared in accordance with U.S. GAAP under Item 8.A.2. Companies are not required to provide notes to this condensed financial information.

2. An eligible company relying on this General Instruction G may elect to include or incorporate by reference financial data prepared in accordance with Previous GAAP. A company electing to include or incorporate by reference Previous GAAP financial information shall prominently disclose, at an appropriate location in the document, that the document contains or incorporates by reference financial statements and other financial information based on both IFRS and Previous GAAP, and that the information based on Previous GAAP is not comparable to information prepared in accordance with IFRS.

3. Companies electing to include or refer to Previous GAAP financial information shall:

(a) Present or refer to selected historical financial data prepared in accordance with Previous GAAP for the four financial years prior to the most recent financial year.

(b) Present operating and financial review and prospects information pursuant to Item 5 that focuses on the financial statements for the two most recent financial years prior to the most recent financial year that were prepared in accordance with Previous GAAP. The discussion need not refer to the reconciliation to U.S. GAAP. No part of the discussion should relate to financial statements prepared in accordance with IFRS.

(c) Include or incorporate by reference comparative financial statements prepared in accordance with Previous GAAP that cover the two financial years prior to the most recent financial year.

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Item 5. Operating and Financial Review and Prospects

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Instructions to Item 5.

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4. To the extent the primary financial statements reflect the use of exceptions permitted or required by IFRS 1, the company shall:

(A) Provide detailed information as to the exceptions used, including:

i. an indication of the items or class of items to which the exception was applied, and

ii. a description of what accounting principle was used and how it was applied.

(B) Include, where material, qualitative disclosure of the impact on financial condition, changes in financial condition and results of operations that alternatives would have had.

(C) Explain the significance of the exception used to the company's financial condition, changes in financial condition and results of operations and, where material, identify the line items in the financial statements affected by the exceptions from IFRS.

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Item 8. Financial Information

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Instructions to Item 8.

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3. If the primary financial statements included in the document represent the first filing by the company with the SEC of consolidated financial statements prepared in accordance with IFRS, the notes to the financial statements prepared in accordance with IFRS shall disclose the following:

(A) The reconciliation from Previous GAAP to IFRS required by IFRS 1 shall be presented in a form and level of information sufficient to explain all material adjustments to the balance sheet and income statement and, if presented under Previous GAAP, to the cash flow statement; and

(B) To the extent the primary financial statements reflect the use of exceptions permitted or required by IFRS 1, the company shall identify each exception used, including:

i. an indication of the items or class of items to which the exception was applied, and;

ii. a description of what accounting principle was used and how it was applied.

* * * * *

Dated: March 11, 2004.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–5982 Filed 3–17–04; 8:45 am]

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Federal Register

Thursday,
March 18, 2004

Part III

Securities and Exchange Commission

17 CFR Part 240
Securities Transactions Settlement; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 33–8398; 34–49405; IC–26384; File No. S7–13–04]

RIN 3235–AJ19

Securities Transactions Settlement

AGENCY: Securities and Exchange Commission.

ACTION: Concept release; Request for comment.

SUMMARY: The Securities and Exchange Commission (''Commission'') is seeking comment on methods to improve the safety and operational efficiency of the U.S. clearance and settlement system and to help the U.S. securities industry achieve straight-through processing. First, the Commission is seeking comment on whether the Commission should adopt a new rule or the self-regulatory organizations should be required to amend their existing rules to require the completion of the confirmation and affirmation process on trade date (''T+0'') when a broker-dealer provides delivery-versus-payment or receive-versus-payment privileges to a customer. Second, the Commission is seeking comment on the benefits and costs associated with implementing a settlement cycle for most broker-dealer transactions that is shorter than three days (''T+3''). Third, the Commission is seeking comment on reducing the use of physical securities.

DATES: Comments should be submitted on or before June 16, 2004.

ADDRESSES: Comments may be submitted electronically or by paper. Electronic comments may be submitted by: (1) Electronic form on the SEC Web site (*http://www.sec.gov*) or (2) e-mail to *rule-comments@sec.gov.* Mail paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to file number S7–13–04; this file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. We do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Jerry Carpenter, Assistant Director; Jeffrey Mooney, Senior Special Counsel; Susan Petersen, Special Counsel; Michael Milone, Special Counsel; or Jennifer Lucier, Special Counsel at (202) 942–4187, Office of Trading Practices and Processing, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

I. Introduction

In 1975, Congress enacted section 17A of the Securities Exchange Act of 1934 (''Exchange Act''),[1] which directs the Commission to facilitate the establishment of a national clearance and settlement system for securities transactions. In providing the Commission with this authority, the Congress made the following findings:

(1) The prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors.

(2) Inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.

(3) New data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement.

(4) The linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors.[2]

These findings serve as objectives in the Commission's ongoing efforts to enhance efficiency and reduce risk in the operation of the U.S. clearance and settlement system. As one means of furthering these objectives, the Commission staff supports industry initiatives to improve the operation of the clearance and settlement system. One such recent industry initiative is to enhance the reliability and efficiency of securities transaction processing by emphasizing straight-through processing (''STP'')[3] and to shorten the settlement cycle for securities transactions. The Securities Industry Association (''SIA'') has taken the lead in this effort, in cooperation with a number of other trade organizations, market participants, and regulatory bodies representing a cross-section of industry participants domestically and internationally.[4]

The SIA identified ten building blocks as essential to realizing the goal of improving the speed, safety, and efficiency of the trade settlement process: [5]

1. Modify internal processes at broker-dealers, asset managers, and custodians to ensure compliance with compressed settlement deadlines.

2. Identify and comply with accelerated deadlines for submission of trades to the clearing and settlement systems.

3. Amend the National Securities Clearing Corporation's (''NSCC'') trade guarantee process so that the guarantee is provided on trade date.

4. Report trades to clearing corporations in locked-in format and revise clearing corporations' output.

5. Rewrite Continuous Net Settlement processes at NSCC to enhance speed and efficiency.

6. Reduce reliance on checks and use alternative means of payment, such as automatic debits allowed by the National Automated Clearing House Association.

7. Immobilize securities shares prior to conducting transactions.

8. Revise the prospectus delivery rules and procedures for initial public offerings.

9. Develop industry matching utilities and linkages for all asset classes.

10. Standardize reference data and move to standardized industry protocols

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[1] 15 U.S.C. 78q–1. For legislative history concerning Section 17A, *see, e.g.,* Report of Senate Comm. on Housing and Urban Affairs, Securities Acts Amendments of 1975: Report to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 4 (1975); Conference Comm. Report to Accompany S. 249, Joint Explanatory Statement of Comm. of Conference, H.R. Rep. No. 229, 94th Cong., 1st Sess., 102 (1975).

[2] 15 U.S.C. 78q–1(a)(1)(A)–(D).

[3] The Securities Industry Association describes STP ''as the seamless integration of systems and processes to automate the trade process from end-to-end—trade execution, confirmation, and settlement—without manual intervention or the re-keying of data.'' ''STP Glossary,'' prepared by the SIA and available at *http://www.sia.com/stp/other/Glossary_v2.3.xls.*

[4] The SIA created a steering committee and several subcommittees to focus on various aspects of its project. Copies of the committees' white papers and reports are available on the SIA's Web site *www.sia.com/stp/html/industry_reports.html.* The Commission staff participates on the SIA's STP steering and legal and regulatory committees as observers.

[5] ''SIA T+1 Business Case Final Report,'' at 18–21 (August 2000)(''SIA Business Case Report''). The report is available online at *http://www.sia.com/t_plus_one_issue/pdf/BusinessCaseFinal.pdf.*

for broker-dealers, asset managers, and custodians.

Initially, the main emphasis of this industry effort was on shortening the date of trade settlement from the current three business days after trade date (''T+3'') to settlement on the next business day after trade date (''T+1''). In July 2002, the SIA shifted the principal focus of the initiative from shortening the settlement cycle to achieving industry-wide STP.[6] In refocusing the project, the SIA stated that the industry needed to focus on more effective STP before it would be in a position to fully evaluate the conversion from T+3 to T+1.[7] The SIA, however, plans to reconsider the need to pursue a reduction in the settlement cycle in 2004.[8]

Reducing risk and increasing efficiency in securities clearance and settlement has also been the focus of recent international initiatives. For the past several years, Commission staff has participated on a Task Force organized by the Committee on Payment and Settlement Systems (''CPSS'') of the Group of 10 central banks and the International Organization of Securities Commissions (''IOSCO'')[9] that was charged with promoting the implementation of measures that can reduce risks, increase efficiency, and provide safeguards for investors in securities clearance and settlement systems. In November 2001, the CPSS and IOSCO published the Task Force's findings in a report titled, ''Recommendations for Securities Settlement Systems'' (''CPSS/IOSCO Report'').[10] The CPSS/IOSCO Report set forth 19 recommendations that established minimum standards for the operation of a settlement system.[11]

In November 2002, the Task Force published an assessment methodology for the recommendations.[12] The assessment methodology is primarily intended for use in self-assessments by national authorities to determine whether markets in their jurisdiction have implemented the recommendations contained in the CPSS/IOSCO Report and to develop action plans for implementation where necessary. The Commission and the Board of Governors of the Federal Reserve System have begun assessing the U.S. clearance and settlement system.

On January 30, 2003, the Group of Thirty (''G30'') published a report titled, ''Global Clearing and Settlement, A Plan of Action'' (''2003 G30 Report'').[13] The 2003 G30 Report describes best practices for clearing entities operating in the major mature markets with the goal of improving cross-border clearance and settlement. Commission staff participated in the G30's efforts to prepare the report.

The purpose of this release is to build upon these initiatives and continue the exploration of methods to improve the operation of the U.S. clearance and settlement system. People who invest in securities markets want to know that their product will be delivered on time, at the agreed upon terms, and that they will not lose their funds and securities because of insolvency, mismanagement, or operational difficulties. In particular, the focus of this release is on improving the trade confirmation/affirmation process, shortening the settlement cycle, and reducing the use of physical securities. Regulators and financial supervisors globally are also addressing these areas.[14] In light of these domestic and international efforts, the Commission believes that it is timely to request comment on these issues to help continue the ongoing dialogue concerning the safety, reliability, and efficiency of the U.S. clearance and settlement system.

II. Trade Confirmation and Affirmation

A. Confirmation/Affirmation Process

Promptly verifying trade details is essential to identifying discrepancies that can lead to, among other things, settlement failures and errors in recording trades.[15] Currently, the self regulatory organizations' (''SRO'') confirmation rules require a broker-dealer to use the facilities of a registered clearing agency, an entity that has received an exemption from clearing agency registration, or a qualified vendor for the confirmation/affirmation of securities transactions when the broker-dealer allows a customer to pay for the trade when the broker-dealer delivers the securities or cash to the customer.[16] This process is generally

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[6] ''SIA Board Endorses Program to Modernize Clearing and Settlement Process for Securities,'' STP Connections (Securities Industry Association, New York, NY), July 18, 2002, (press release from the SIA Board of Directors endorsing straight-through processing). *See* SIA STP Connections, Issue 1, July 22, 2002, available at *http://www.sia.com/stp/pdf/STP_Newsletter_Issue_1.pdf.*

[7] *Id.* at 2.

[8] *Id.* at 2.

[9] The Committee on Payment and Settlement Systems serves as a forum for the central banks of the G10 countries to monitor and analyze developments in payment and settlement arrangements and to consider related policy issues. The International Organization of Securities Commissions consists of 164 securities market regulators that have agreed to cooperate in order to promote high standards of regulation and to maintain efficient and sound domestic and international securities markets. The Commission is a member of IOSCO.

[10] ''Recommendations for Securities Settlement Systems,'' CPSS/IOSCO Task Force (November 2001). The Commission actively participated in drafting the CPSS/IOSCO Report and supported its publication.

[11] The 19 recommendations are contained in Appendix 1.

[12] ''Assessment Methodology for Recommendations for Securities Settlement Systems,'' CPSS/IOSCO Task Force (November 2002). The Commission actively participated in drafting the CPSS/IOSCO assessment methodology and supported its publication.

[13] The G30, established in 1978, is an independent, non-partisan, not-for-profit organization composed of international financial leaders whose focus is on international economic and financial issues. For additional information about the G30, visit their Web site at *http://www.group30.org.*

[14] Several regulatory and oversight bodies are addressing confirmation/affirmation processing, the shortening of settlement cycles, and reducing the use of physical securities. Many of the countries involved in the CPSS/IOSCO Report are currently assessing operations in their jurisdictions and have launched efforts to improve securities transaction processing. For example, the Canadian Capital Markets Association, a federally incorporated, not-for-profit organization, has been working with the Canadian Depository for Securities and provincial regulators to implement straight-through processing and potentially shorten the settlement cycle in Canada to T+1. *See, http://www.ccma-acmc.ca.* Likewise, in September 2003, the Hong Kong Securities and Futures Commission (''HKSFC'') published its conclusions, based on comments received on its consultation paper, supporting a certificate-less securities market in Hong Kong. The HKSFC's consultative paper and conclusions are available at *http://www.hksfc.org.hk.* In July 2003, the Governing Council of the European System of Central Banks (''ESCB'') and the Committee of European Securities Regulators (''CESR'') published for comment a set of standards for clearance and settlement in the European Union that were based on recommendations made in the CPSS/IOSCO Report. The ESCB–CESR paper is available at *http://www.centralbank.ie/gconsult/consult9b.pdf.*

[15] CPSS has defined a fail as ''a failure to settle a securities transaction on the contractual settlement date, usually because of technical or temporary difficulties.'' ''A glossary of terms used in payments and settlement systems,'' at 18, CPSS (March 2003).

[16] *See, e.g.*, Securities Exchange Act Release No. 19227 (November 9, 1982), 47 FR 51658 (November 16, 1982) [File No. SR–NYSE–82–1 etc.] (approving SRO confirmation rules). The SRO confirmation rules include: American Stock Exchange (''AMEX'') Rule 423(5); Chicago Stock Exchange Article XV, Rule 5; New York Stock Exchange (''NYSE'') Rule 387(a)(5); Pacific Stock Exchange Rule 9.12(a)(5); Philadelphia Stock Exchange Rule 274(b); National Association of Securities Dealers (''NASD'') Rule 11860(a)(5); and Municipal Rulemaking Board Rule G–15(d)(ii). Trades settled outside of the United States are excluded from the confirmation rules' requirements.

The Commission's order approving the confirmation rules concluded that the confirmation rules were consistent with the establishment of a national system of clearance and settlement, mandated in Section 17A of the Exchange Act, because the trade confirmation service provided by registered clearing agencies provided uniform procedures for the confirmation and affirmation of institutional trades. The Commission also concluded that automated confirmations,

Continued

referred to as providing the customer with receive-versus-payment (''RVP'') or delivery-versus-payment (''DVP'') privileges. Generally, broker-dealers provide RVP or DVP privileges to institutional customers. The SRO confirmation rules also require the broker-dealer to have obtained an agreement from each customer with RVP/DVP privileges that the customer will affirm each trade promptly upon receipt of the confirmation.[17]

After a broker-dealer executes a trade for a customer who has RVP/DVP privileges, the broker-dealer will provide trade details to the customer. This step is called the ''notice of execution'' or ''NOE.'' If the customer submitted the order on behalf of other parties (*e.g.*, an investment manager on behalf of several mutual funds), the customer will tell the broker-dealer how to ''allocate'' the transaction among the underlying entities. The broker-dealer will reply to the customer by sending details of, or ''confirming,'' each allocation. If the broker has correctly allocated the trade, the customer will ''affirm'' the trade.[18]

In the U.S., the only entity currently offering confirmation/affirmation services is the Global Joint Venture Matching Services—US, LLC (known as ''Omgeo'').[19] Once a trade has been affirmed, Omgeo submits a deliver order (''DO'') to The Depository Trust Company (''DTC'')[20] for book-entry settlement.[21]

Broker-dealers generally confirm trades with their institutional customers on trade date (''T+0'') while their institutional customers affirm the large majority of their trades after T+0. For example, in the first half of 2003, of the approximate 700,000 trades that were submitted to Omgeo on an average daily basis the confirmation rate on T+0 was approximately 85.8%, but affirmation rates were approximately 23% on T+0, 85% on T+1, and 88.5% on T+2.[22] Therefore, approximately eleven percent of trades either are not affirmed at all or are not affirmed using Omgeo's confirmation/affirmation process.[23]

B. Industry Initiative

1. SIA ITPC White Papers

As part of its effort to improve the clearance and settlement process, the SIA formed the Institutional Transaction Processing Committee (''ITPC'') to evaluate the settlement process for institutional trades. The SIA's ITPC published several white papers that describe what it believes are shortcomings in the processing of RVP/DVP transactions and has recommended the use of matching utilities as the way to improve the process.[24] As described in the ITPC 2002 White Paper, current methods of institutional transaction processing involve a series of sequential steps by the broker-dealer and its customer with only one participant reviewing and entering trade data at a time. The result is that the processing swings back and forth between the customer and broker-dealer, and with each pass, one party will provide additional trade data. ''The process is reactive in that each participant waits for a trigger before executing the next step in the process.''[25] The result is delay and redundant flows of non-essential data.

According to the ITPC, another major cause for delay in institutional transaction processing is the fact that many industry participants have to manually re-key trade data into several systems. Broker-dealers and their customers tend to have internal systems that lack both automation and common message standards. This lack of synchronized automated data causes errors and discrepancies.

The ITPC 2002 White Paper states that redesigning the institutional transactional settlement model to achieve STP would allow the industry to streamline today's operating process, increase capacity significantly, decrease the number of exception items, and reduce costs over time by eliminating many redundant and manual steps. To address the perceived deficiencies in the existing institutional transaction process, the ITPC envisioned an institutional transaction processing model in which trade data is matched by a matching utility (''MU''). The MU would seamlessly match the data submitted by the broker-dealer and its institutional customer and would submit the matched transaction information to the depository in real time.[26] The ITPC model ''treats the trade cycle as a unit from post-execution to settlement rather than a group of loosely related messages and processes'' where, ''communications between trade participants and the matching utility are assumed to be automated, with virtually simultaneous processes comprising the 'steps' of each phase.''[27]

2. Industry Proposals for Rulemaking

One of the principal goals of the SIA's STP initiative is for all transactions to be confirmed and affirmed or matched on T+0.[28] In order to achieve STP, either to accommodate a standard settlement cycle or as a needed improvement to institutional transaction processing, the SIA has suggested two Commission or

affirmations, and settlement would increase the quantity and accuracy of trade information regarding customer-side settlement and therefore were consistent with the requirements of Sections 6 and 15A of the Exchange Act to foster the cooperation and coordination of persons engaged in clearing, settling, and processing information with respect to securities transactions. 15 U.S.C. 78f and 78o–3. Finally, the Commission believed that the aggregate benefits of the confirmation rules to broker-dealers, investment managers, and custodian banks outweighed the costs to these parties and did not impose an inappropriate burden on competition. 47 FR 51658.

[17] *E.g.,* NYSE Rule 387(a)(4). The agreement must provide that the customer will affirm the trade by T+2 when the broker-dealer provides the customer RVP privileges and by T+1 when the broker-dealer provides DVP privileges.

[18] The trade confirmation/affirmation process is discussed in detail in the SIA paper, ''Institutional Transaction Processing Model,'' which is available at *http://www.sia.com.*

[19] Generally, an entity that provides a matching service falls within the Exchange Act's definition of a clearing agency and therefore must register as such or obtain an exemption from registration. 15 U.S.C. 78c(a)(23). The Commission has issued an order conditionally exempting Omgeo from clearing agency registration with regard to providing matching and confirmation/affirmation services. Securities Exchange Act Release No. 44188 (April 17, 2001), 66 FR 20494 (April 23, 2001) [File. No. 600–32].

[20] DTC is a clearing agency registered under Section 17A of the Exchange Act.

[21] A DO is an instruction from a participant directing DTC to debit its securities account and to credit the securities account of another DTC participant.

[22] *See generally* Lee Cutrone, Managing Director, Omgeo, remarks at the SIA STP Spring Conference, ''The Path to STP,'' (May 20, 2003) (presentation available online at *http://www.sia.com/stpspring03/pdf/Path_Lee.Cutrone.pdf).*

[23] These exceptional trades generally are settled by the broker-dealer giving DTC a DO through a manual process.

[24] The ITPC published its first white paper in December 1999 with a subsequent version released in February 2001. The final ITPC white paper, ''Institutional Transaction Processing Model,'' was published in May 2002 (''ITPC 2002 White Paper'').

[25] ITPC 2002 White Paper at 3.

[26] *See supra* note 19.

[27] ITPC 2002 White Paper at 6.

[28] The SIA formed an Institutional Oversight Committee (''IOC'') to oversee the implementation of STP to institutional trade processing. The IOC's goal is that on T+0 all parties to a transaction should have the information required for automated settlement. The IOC believes this implies that:

(1) 100% of trades would be matched or affirmed on trade date. Ultimately, the goal will be to replace the confirm/affirm process with matching;

(2) all communications between participants would be asynchronous (non-sequential) and electronic, including: (a) Notice of executions; (b) allocations; (c) match status/affirmations; (d) settlement instructions;

(3) an industry standard electronic format for message communication would be adopted; and

(4) manual processing should be exception-based. ''Institutional Oversight Committee Project Charter,'' Institutional Oversight Committee (December 16, 2002).

SRO rulemaking alternatives.[29] The first would require broker-dealers to obtain an agreement from their customers at the outset of the relationship or at the time of the trade to participate in and to comply with the operational requirements of interoperable trade-match systems as a condition to settling trades on an RVP/DVP basis. The second would require investment managers to participate in a trade-match system, similar to the way broker-dealers and institutions are required by the SRO confirmation/affirmation rules to participate in a confirmation/affirmation system. Either alternative would result in the completion of the confirmation/affirmation process within minutes of trade execution. They also would provide time to resolve any discrepancies before settlement date, thereby reducing fails.[30]

C. CPSS/IOSCO and G30 Recommendations

Consistent with the SIA project, the CPSS/IOSCO Report recommended that confirmation and affirmation of institutional investors' trades should occur as soon as possible after trade execution, preferably on T+0, but no later than T+1.[31] The CPSS/IOSCO Report recommended these timeframes because early agreement on trade details will allow early detection of errors and discrepancies in trade data. This should help market participants avoid errors in recording trades, which could result in inaccurate books and records, increased and mismanaged market risk and credit risk, and increased costs. The CPSS/IOSCO Report also stated that STP initiatives should be encouraged.[32] Many practitioners believe that market-wide achievement of STP is essential to maintaining high settlement rates as volumes increase and for achieving timely settlement of cross-border trades.[33]

The 2003 G30 Report endorsed the CPSS/IOSCO recommendations [34] and recommended that trade confirmation be further automated and standardized and that matching utilities be used industry-wide.[35] Specifically, the 2003 G30 Report urged market participants to develop compatible, industry-accepted technical and market-practice standards to automate the confirmation/affirmation process for institutional trades. Like CPSS/IOSCO, the G30 recommended matching institutional transaction data on trade date.[36] The 2003 G30 Report stressed that in order to achieve matching on trade date without introducing risk to the system, current post-trade processing models must be improved.[37]

D. Discussion

The Commission preliminarily is of the view that the goal of industry-wide trade matching is the best method to improve the confirmation/affirmation process and to achieve STP. Nevertheless, the imposition of a requirement that all broker-dealers and their institutional customers use a matching service raises some significant issues.

For example, mandating the use of a matching service for the confirmation/affirmation process for institutional trades may stifle innovation and competition. While matching is the leading technology today, future developments may provide greater efficiency and improved service. Mandating that the industry use matching may make it virtually impossible for a service provider with a new technology to compete. Requiring all entities to use a matching service also may impose an unnecessary burden on small and medium broker-dealers and asset managers.[38]

The Commission believes that even an investment manager/investment adviser who executes only a small number of trades should be able to affirm its trades with its brokers on T+0. Accordingly, the Commission seeks comment on how best to have the confirmation/affirmation process completed on T+0 for all institutional trades. The following two approaches, among others, could be considered.

First, the SROs could amend their confirmation rules to prohibit broker-dealers from extending RVP/DVP privileges to any customer unless all trades with that customer are confirmed and affirmed on T+0. Because the SROs currently have virtually identical versions of the confirmation rules, this may be the most straightforward way to reach this goal. The difficulty with this approach is that it would require brokers to take actions to assist in achieving compliance.[39] Broker-dealers may be reluctant to exert pressure on customers that fail to affirm on time because those customers may take their business elsewhere.

Another option would be for the Commission to adopt a rule that would require broker-dealers to confirm and affirm trades on trade date.[40]

We believe that these alternatives would preserve competition and innovation because they do not require the use of a particular service or technology. Further, the Commission rule could complement rather than replace the existing SRO confirmation rules. For example, the SRO confirmation rules could continue to require that the facilities of a clearing agency be used for the book-entry settlement of all depository eligible transactions, while the Commission rule could require that the confirmation and affirmation occur on T+0. In addition, the SRO confirmation rules could continue to provide the procedures for a qualified vendor to provide electronic confirmation and affirmation services.

The Commission seeks comment on the following issues.

1. What are the benefits and costs of same-day trade confirmation/affirmation?

[29] Letter from Arthur Thomas, Chairman, T+1 Steering Committee, to Laura S. Unger, Acting Chairman, Commission (February 16, 2001).

[30] In June 2003, the IOC's Business Practices & Matching Implementation Working Group published Institutional Matching User Requirements (''User Requirements''). The User Requirements set forth a method for using a matching utility for post trade processing of institutional trades. The User Requirements also provide guidance on the following areas: (1) Connectivity; (2) process flows; (3) participant profiles; (4) interfaces; (5) new account set-up; (6) exception processing; and (7) variations to the ITPC Model. The task of this working group is to identify and analyze issues related to pre-allocated trades, prime brokerage, correspondent clearing, when-issued trading, and other unresolved institutional trade processing issues. The User Requirements are available on the SIA's Web site at *http://www.sia.com/stp/pdf/MatchingUtilityUserReq.pdf.*

[31] CPSS/IOSCO Report at 9.

[32] *Id.* at 9.

[33] *Id.* at 10.

[34] 2003 G30 Report at 4.

[35] *Id.* at 31.

[36] *Id.*

[37] *Id.* at 80.

[38] As the speaker at one industry conference stated, ''It is difficult to argue that an investment manager/investment adviser with only 2–3 block executions per week should be compelled to interface electronically with a MU.'' John P. Davidson III, Managing Director, Morgan Stanley, remarks at the SIA STP Spring Conference, Institutional Oversight Subcommittee Update (May 19, 2003)(presentation available at *http://www.sia.com/stpspring03/html/presentations.html).*

[39] To facilitate compliance with the SRO confirmation rules, Omgeo (as did its predecessor The Depository Trust Company through the Institutional Delivery and TradeSuite systems) provides the SROs with reports on confirmation and affirmation activity.

[40] For example, under Section 15(c)(6) of the Exchange Act, 15 U.S.C. 78(c)(6), the Commission has the authority to issue rules and regulations with respect to brokers or dealers ''necessary or appropriate in the public interest and for the protection of investors or to perfect or remove impediments to a national system for the prompt and accurate clearance and settlement of securities transactions, with respect to the time and method of, and the form and format of documents used in connection with making settlements of and payments for transactions in securities, making transfers and deliveries of securities and closing accounts.''

2. What are the relative burdens of trade date confirmation/affirmation on the different market participants involved?

3. What effect would trade date confirmation/affirmation have on the relationship between a broker-dealer and its customer?

4. Do the benefits of trade date confirmation/affirmation accrue to all participants—brokers, institutional customers, custodians, or matching utilities? Do they accrue to large, medium, and small entities?

5. Does trade date confirmation/affirmation introduce any new risks? If so, can they be quantified?

6. Would the modification of the existing SRO confirmation rules or the adoption of a new Commission rule be feasible approaches to having trades confirmed/affirmed by T+0? Are there alternative rule changes?

7. If rules mandating trade date confirmation/affirmation are adopted, what should be the time frame for implementing them? What factors should the Commission consider in determining the implementation period?

8. Would same-day confirmation/affirmation affect cross-border trading? If so, how would it do so?

9. Should any confirmation/affirmation rule apply to all types of non-exempt securities?

10. Should all participants in institutional trades be required to use a matching service if the Commission were to require confirmation/affirmation on T+0?

11. What, if anything, should the Commission do to facilitate the standardization of reference data and use of standardized industry protocols by broker-dealers, asset managers, and custodians?

III. Securities Settlement Cycles

A. Introduction

It is generally accepted that a substantial portion of the risks in a clearance and settlement system is directly related to the length of time it takes for trades to settle. In other words, ''time equals risk.'' [41] In the context of the Commission's proposal in 1993 to move to T+3, the Federal Reserve Board (''Board'') noted that settlement systems for securities and other financial instruments were a potential source of systemic disturbance to financial markets and to the economy.[42] In the Board's view, the key features of an ideal settlement system were the settlement of trades immediately after execution and payment in same-day funds.[43] Similarly, the Federal Reserve Bank of New York stated at that time that shortening the settlement cycle decreased the likelihood for adverse developments to occur between the execution and settlement of each trade, thus lowering the credit and market risks that could arise when settling individual transactions.[44] More recently, the CPSS/IOSCO Report noted that the longer the period from trade execution to settlement, the greater the risk that one of the parties may become insolvent or default on the trade, the larger the number of unsettled trades, and the greater the opportunity for the prices of the securities to move away from the contract prices, thereby increasing the risk that the non-defaulting parties will incur a loss when replacing unsettled contracts.[45]

Arguably, the most significant risk that must be addressed by any clearance and settlement system is systemic risk. Systemic risk is the risk that the inability of one market participant to meet its obligations when due will cause others to fail to meet their obligations.[46] Systemic risk can result from other risks inherent in clearance and settlement systems, such as credit, liquidity and operational risks. A severe problem in one or more of these areas can cause securities firms to fail and increase the likelihood of systemic disruptions in the financial markets. While the Commission believes that the threat of a serious systemic disruption to the U.S. financial markets from a settlement failure is small because of the risk management controls that are in place, it is nevertheless a serious concern. Thus, it is important that the U.S. securities industry continue to improve its risk management procedures in order to maintain safe and reliable clearance and settlement.

In part as a response to the 1987 Market Break and the 1990 bankruptcy of Drexel Burnham Lambert Group,[47] the Commission adopted Rule 15c6–1, which shortened the settlement time frame for most broker-dealer securities transactions from T+5 to T+3.[48] Rule 15c6–1 was adopted in connection with other measures taken by the securities industry, SROs, and the Commission to improve the operation of the U.S. clearance and settlement system and reduce risk. The other measures included improving the confirmation/affirmation process for institutional trades, expanding cross-margining and guarantee arrangements amongst clearing agencies, and implementing same-day funds settlement. These steps helped facilitate a smooth transition from T+5 to T+3.

The implementation of a T+3 settlement cycle is widely viewed as a success, and the U.S. clearance and settlement system continues to be one of the safest and most reliable in the world.[49] Nevertheless, we believe that we should consider the necessity and appropriateness of mitigating systemic disruptions and facilitate a more efficient clearance and settlement system. Three principal factors underlie our thinking in reviewing options

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[41] Prompted by the Group of Thirty's 1989 recommendations, in 1991 the Commission requested that U.S. industry participants form a Task Force to evaluate whether and what changes to the clearance and settlement system should be pursued, and to determine a timetable for the implementation of the changes. The Bachmann Task Force, chaired by John Bachmann, presented its findings to the Commission in May 1992. The Task Force concluded that ''time equals risk'' and that the safety and soundness of the U.S. securities market would be substantially improved by shortening the settlement cycle for corporate securities to T+3 by mid-1994. The Bachmann Task Force on Clearance and Settlement in the U.S. Securities Markets, Report Submitted to the Chairman of the U.S. Securities and Exchange Commission (May 1992)(''Bachmann Report''). *See also* Securities Exchange Act Release No. 31904 (February 23, 1993), 58 FR 11806 (March 1, 1993) [File No. SR–5–93].

[42] Letter from William W. Wiles, Secretary to the Federal Reserve Board, to Jonathan G. Katz, Secretary, Commission (September 1, 1993) (commenting on the proposal to adopt Rule 15c6–1 standardizing the settlement cycle for most securities transactions to three business days after trade date). *Infra* note 48.

[43] *Id.*

[44] Letter from William J. McDonough, President, Federal Reserve Bank of New York, to Jonathan G. Katz, Secretary, Commission (August 27, 1993) (commenting on the proposal to adopt Rule 15c6–1 standardizing the settlement cycle for most securities transactions to three business days after trade date). *Infra* note 48.

[45] CPSS/IOSCO Report at 10.

[46] *Id.* at 41.

[47] For a description of the bankruptcy of the Drexel Lambert Group, *see,* ''The Issues Surrounding the Collapse of Drexel Burnham Lambert,'' Hearings before the United States Congress, Senate Banking, Housing, and Urban Affairs, 101st Congress, 2d Sess. 5 (1990) (testimony of Richard C. Breeden, Chairman, Commission).

[48] 17 CFR 240.15c6–1. Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891 (October 13, 1993) [File No. S7–5–93] (''Adopting Release''). Rule 15c6–1 became effective on June 7, 1995.

[49] The U.S. clearance and settlement system settles more trades today with a lower failure rate than before Rule 15c6–1's adoption. ''In May 1995, before T+3, and with an average daily volume running at 726 million shares in NYSE, Amex and Nasdaq securities, NSCC 'failures to deliver' were an average of 8.43% of all deliveries. In November 1995, after the T+3 conversion, with average daily volume running at 830 million shares in the same securities, NSCC 'failures to deliver' declined to 7.67%.'' ''Speeding up Settlement: The Next Frontier,'' Arthur Levitt, Chairman, Commission, remarks at the Symposium on Risk Reduction in Payments, Clearance and Settlement Systems (January 26, 1996)(full text available at *http://www.sec.gov/news/speech/speecharchive/1996/spch071.txt*). According to NSCC, for the first seven months of 2003, the average daily failure rate has been 6.80%.

relating to shortening the settlement cycle.

1. Size and growth of the markets: In 1995, the year Rule 15c6–1 became effective, the combined average daily volume on the New York Stock Exchange (NYSE), American Stock Exchange (''AMEX''), and National Association of Securities Dealers Automated Quotation System (''Nasdaq'') was 726 million shares. By the end of 2003, the combined average daily volume for the NYSE and Nasdaq was approximately 3.0 billion shares.

2. Tighter linkages: Currently, many financial firms participate in multiple markets in multiple jurisdictions and clearing agencies are increasing their cross-border activities. Therefore, the failure of one system participant could cause a wide circle of participants to fail.

3. Possible wide-scale regional disruption: In the aftermath of the events of September 11, 2001, financial market participants must anticipate significant operational disruptions.[50]

The Commission continues to agree with the underlying conclusions that led to shortening the settlement cycle from T+5 to T+3. First, at any given point during the settlement cycle, fewer unsettled trades would be subject to credit and market risk, and there would be less time between trade execution and settlement for the value of those trades to deteriorate.[51] Second, a shorter settlement cycle would reduce the liquidity risk among derivative and cash markets and reduce financing costs by allowing investors that participate in both markets to obtain the proceeds of securities transactions sooner. Third, shortening the settlement cycle would encourage greater efficiency in clearing and settlement. However, before taking further action, the Commission believes that it is appropriate to seek comment on the benefits and costs of implementing a settlement cycle shorter than T+3 as a potential method of further reducing risk and improving efficiency. In deciding whether or not to shorten the settlement cycle beyond T+3, the Commission must determine whether benefits of establishing a shorter settlement justify the costs of implementing it. The Commission believes that an evaluation of the current operation of Rule 15c6–1 is an appropriate starting point for such an analysis.[52]

B. Rule 15c6–1

The Commission adopted Rule 15c6–1 to ''facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities.'' [53] The rule was adopted in 1993 and became effective in 1995.[54] Rule 15c6–1 provides, ''a broker or dealer shall not effect or enter into a contract for the purchase or sale of a security (other than an exempted security, government security, municipal security, commercial paper, bankers' acceptances, or commercial bills) that provides for payment of funds and delivery of securities later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.'' [55]

The Commission's adoption of Rule 15c6–1 followed the 1989 G30 Report [56] and the Bachmann Report.[57] The 1989 G30 Report recommended that markets around the world shorten settlement cycles to T+3 by 1992 ''[i]n order to minimize counterparty risk and exposure with securities transactions, same day settlement is the final goal.'' [58] The Bachmann Report echoed this view and concluded that a shorter settlement period would reduce market risk to the clearing corporations, their members, and the markets as a whole and proposed T+3 as the standard settlement period.[59]

In the next sections, we discuss specific issues related to the current operation of Rule 15c6–1 and risk considerations in shortening the settlement cycle beyond T+3.

C. Current Operation of Rule 15c6–1

1. Coverage

Rule 15c6–1 covers all securities, except for exempted securities (including government securities and municipal securities,[60] commercial paper, bankers' acceptances, or commercial bills).[61] In addition, the rule specifically exempts sales of unlisted partnership interests.[62] The Commission has granted an exemption for securities that do not generally trade in the U.S.[63] The Commission also exempted from Rule 15c6–1 a contract for the purchase or sale of any security issued by an insurance company that is funded by or participates in a separate account, including a variable annuity contract or a variable life insurance contract or any other insurance contract registered as a security under the Securities Act of 1933 (''Securities Act'').[64]

2. Offerings

Rule 15c6–1 provides a T+4 settlement cycle in firm commitment underwritings for securities that are priced after 4:30 p.m. Eastern time,[65] which enables market participants to satisfy prospectus delivery requirements of the Securities Act.[66] Subsection

[50] On April 7, 2003, the Commission published a joint report with the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency that focused on infrastructure resiliency titled, ''Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System.'' Securities Exchange Act Release No. 47638 (April 7, 2003), 68 FR 17809 (April 11, 2003)[File No. S7–32–02].

[51] The longer the time period from trade execution to settlement, the greater the risk that one of the parties may become insolvent or default on the trade (''credit or counter party risk'') and the greater the risk the price of the securities may move away from the contract price (''market or replacement cost risk'').

[52] As with the move from T+5 to T+3, the appropriate building blocks must be in place. Without these building blocks in place, a move to a shorter settlement cycle could reduce efficiency by producing more failed trades and ultimately increase risk rather than reduce it.

[53] 15 U.S.C. 78q–1(a)(2)(A)(i).

[54] 17 CFR 240.15c6–1. Rule 15c6–1 became effective on June 7, 1995. Prior to 1995, the standard practice for settling securities transactions was five business days after trade date (''T+5'').

[55] 17 CFR 240.15c6–1(a).

[56] ''Clearance and Settlement Systems in the World's Securities Markets,'' Group of Thirty (March 1989) (''1989 G30 Report''). Recommendation 7 of the G30's 1989 Report states, ''[a] '[r]olling [s]ettlement' system should be adopted by all markets. Final settlement should occur on T+3 by 1992.'' Copies of the 1989 G30 Report can be requested from the G30 at *http://www.group30.org.*

[57] *See supra* note 41.

[58] 1989 G30 Report at 14.

[59] Bachmann Report at 6.

[60] Although not covered by Rule 15c6–1, the Commission approved a proposed rule change by the Municipal Securities Rulemaking Board that required transactions in municipal securities to settle by T+3. Securities Exchange Act Release No. 35427 (February 28, 1995), 60 FR 12798 (March 8, 1995) [File No. SR–MSRB–94–10].

[61] 17 CFR 240.15c6–1(a).

[62] 17 CFR 240.15c6–1(b)(1).

[63] Securities Exchange Act Release No. 35750 (May 22, 1995), 60 FR 27994 (May 26, 1995). Under this exemptive order, all transactions in securities that do not have transfer or delivery facilities in the U.S. are exempt from the scope of Rule 15c6–1. Furthermore, if less than 10% of the annual trading volume in a security that has U.S. transfer or delivery facilities occurs in the U.S., transactions in such security will be exempted from Rule 15c6–1 unless the parties clearly intend T+3 settlement to apply. In addition, a depositary receipt is considered a separate security from the underlying security. Thus, if there are no transfer facilities in the U.S. for a foreign security but there are transfer facilities for a depository receipt based on such foreign security, only the foreign security will be exempt from Rule 15c6–1.

[64] Securities Exchange Act Release No. 35815 (June 6, 1995), 60 FR 30906 (June 12, 1995).

[65] 17 CFR 240.15c6–1(c).

[66] Generally, the current underwriting process requires extensive due diligence between trade date and settlement date. Underwriters must consult with internal and external counsel and auditors, ascertain comfort and opinion letters, meet with senior management in order to complete proper due diligence. Final prospectuses are generally prepared on the night of pricing (trade date), leaving three days to book the deal, allocate trades, confirm share

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5(b)(2) of the Securities Act prohibits the sending of securities through interstate commerce ''for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements of subsection (a) of section 10.'' [67] Subsection 5(b)(1) of the Securities Act requires that a prospectus used after a registration statement has been filed must meet the disclosure requirements of section 10 of the Securities Act.[68] The term ''prospectus'' is defined broadly to include any written communication that ''offers a security for sale or confirms the sale of any security.'' [69]

Exchange Act Rule 10b–10 requires that a broker-dealer give or send its customers a written confirmation of a purchase or sale of securities at or before the completion of a transaction.[70] The Securities Act provides that ''a communication provided after the effective date of the registration statement * * * shall not be deemed a prospectus if it is proved that prior to or at the same time with such communication a written prospectus meeting the requirements of'' Section 10(a) is provided.[71] Because the information contained in a Rule 10b–10 confirmation typically does not satisfy the disclosure requirements of Securities Act Section 10, a prospectus meeting Section 10(a) requirements must be sent or given prior to or at the same time with the confirmation, otherwise the confirmation could be considered a non-conforming prospectus.

The current settlement cycle may be the shortest time frame within which customers may be provided with final prospectuses prior to or simultaneously with delivering the Rule 10b–10 confirmation. If the Commission adopts a shorter settlement cycle, industry representatives have stated that it would be extremely challenging to accurately complete necessary due diligence and satisfy the physical prospectus delivery requirements. Therefore, the SIA has asked the Commission to consider eliminating the requirement that the final prospectus be delivered at the same time as the Rule 10b–10 confirmation.[72] In addition, the SIA has asked the Commission to adopt an electronic access standard as a means to satisfy prospectus delivery.[73] According to the SIA, an electronic access standard would alleviate time pressures in the current settlement cycle as well as accommodate future amendments to Rule 15c6–1. Furthermore, should the Commission decide to shorten the settlement cycle to T+1, the SIA has asked the Commission to consider a T+3 settlement cycle for firm commitment offerings priced after 4:30 p.m. Eastern time so that industry participants will have sufficient time to complete their due diligence processes.[74] With regard to any such proposals, it must be shown that they are consistent with investors receiving the information and protections to which they are entitled.

D. Risk Reduction Benefits of Shortening the Settlement Cycle

When the Commission adopted Rule 15c6–1, the Commission believed that shortening the settlement cycle would reduce risks that can lead to systemic disruptions in the financial markets.[75] Accordingly, when considering whether to shorten the settlement cycle further, it would be useful to consider the impact of a shorter settlement cycle on risk.[76]

1. Risks Prior to Settlement [77]

As defined in the CPSS/IOSCO Report, presettlement risk is ''[t]he risk that a counterparty to a transaction for completion at a future date will default before final settlement. The resulting exposure is the cost of replacing the original transaction at current market prices and is also known as replacement cost risk.'' [78]

Presettlement risk can present substantial danger to the settlement system because it involves the change in the value of securities involved in the defaulting party's transactions. In the event of default of a major participant, it may entail credit losses so large as to create systemic problems.[79] As previously stated, reducing the time period from trade execution to settlement is one of the primary methods of reducing this risk.[80]

Episodes of severe market declines magnify replacement cost risk. At the time of the 1987 Market Break, the U.S. settlement cycle was five days and ten of the thirty stocks making up the Dow Jones Industrial Average (''DJIA'') declined 35 percent or more over five days.[81] A default by a buyer of one of these stocks during that period would have exposed the seller to substantial losses. More recently, on Monday, October 27, 1997, the nation's securities markets experienced a tremendous decline when the DJIA fell by 554.26 points. On August 31, 1998, the DJIA experienced a decline of 512.61 points.[82] With sharp price movements, traders may be unwilling or unable to meet margin calls and default on their delivery obligations.

The Commission believes that shortening the settlement cycle could reduce replacement cost risk because the magnitude of replacement cost risk depends on the volatility of the security price and the amount of time that elapses between the trade date and the settlement date.

2. Risks Associated With Settlement

Settlement risk is ''[a] general term used to designate the risk that settlement in a transfer system will not take place as expected. This risk may comprise both credit [83] and liquidity risk.'' [84] Settlement risk is sometimes referred to as principal risk, *i.e.*, the risk of loss of securities delivered or payments made to the defaulting participant prior to the detection of the default.[85] Both the buyer and the seller are exposed to the risk of loss of the full principal value of the securities or funds transferred.

amounts, finalize routing instructions for payment, and prepare for settlement.

[67] 15 U.S.C. 77e(b)(2).

[68] 15 U.S.C. 77e(b)(1).

[69] 15 U.S.C. 77b(a)(10).

[70] 17 CFR 240.10b–10.

[71] 15 U.S.C. 77b(a)(10)(a).

[72] *Supra* note 29.

[73] *Id.*

[74] For a more complete discussion, *see,* ''White Paper version 1.1,'' Syndicate Electronic Storage and Access to Information Committee (June 14, 2000) at *http://www.sia.com/stp/pdf/electronic_storage.pdf.*

[75] *See* Securities Exchange Act Release No. 33023, 58 FR at 52894.

[76] *See* generally CPSS/IOSCO Report at 39–41, Annex 3.

[77] While there are a number of risks that may occur prior to settlement (*e.g.*, market and counterparty risk), for purposes of this release they will be referred to as ''presettlement risk.'' *See generally* CPSS/IOSCO Report at 39–41, Annex 3.

[78] CPSS/IOSCO Report at 48. ''A failure to perform on the part of one party to the transaction will leave the solvent counterparty with the need to replace, at current market prices, the original transaction. When the solvent counterparty replaces the original transaction at current prices, however, it will lose the gains that had occurred on the transaction in the interval between the transaction and default. The unrealized gain, if any, on a transaction is determined by comparing the market price of the security at the time of default with the contract price; the seller of a security is exposed to a replacement cost loss if the market price is below the contract price, while the buyer of the security is exposed to such a loss if the market price is above the contract price. Because future securities price movements are uncertain at the time of the trade, both counterparties face replacement cost risk.'' CPSS/IOSCO Report at 39. *Supra* note 51.

[79] *Id.*

[80] Bachmann Report at 6.

[81] ''Clearance and Settlement in U.S. Securities Markets,'' Federal Reserve Board (March 1992).

[82] ''Trading Analysis of October 27 and 28, 1997,'' report by the Division of Market Regulation, Commission (September 1998).

[83] Credit risk is the risk of loss from default by a participant in a settlement system, typically as a consequence of insolvency. CPSS/IOSCO Report at 39, 48.

[84] *Id.* at 49.

[85] *Id.* at 39 and 48.

In addition, both parties to a securities trade are exposed to liquidity risk on the settlement date. Liquidity risk includes the risk that the seller of a security who does not receive payment when due may have to borrow or liquidate assets to complete other payments. It also includes the risk that the buyer of the security does not receive delivery when due and may have to borrow the security in order to complete its own delivery obligation. The costs associated with liquidity risk depend on the liquidity of the markets in which the affected party must make its adjustments; the more liquid the markets, the less costly the adjustment.[86]

Liquidity problems have the potential to create systemic disruptions. In particular, if liquidity problems arise when securities prices are changing rapidly, failures to meet obligations when due are more likely to elevate concerns about solvency. In the absence of a strong linkage between delivery and payment, the emergence of systemic liquidity problems at such times is especially likely. The fear of losing the full principal value of securities or funds could induce some participants to withhold deliveries and payments, which, in turn, may prevent other participants from meeting their obligations.[87]

As noted above, one reason for shortening the settlement cycle from T+5 to T+3 was that the shorter interval would reduce the liquidity risk in derivative and cash markets and reduce financing costs by allowing investors that participate in both markets to obtain the proceeds of securities transactions sooner. Shortening the settlement cycle to T+1, for example, also would synchronize the settlement of corporate and derivative securities and have liquidity benefits. By reducing the lag between the settlement of derivatives and government securities and the settlement of equity and corporate securities, investors that participate in both markets would be able to reduce their financing costs and obtain the proceeds of their securities transactions on a timelier basis.[88]

3. Risks Associated With Operations

The CPSS/IOSCO Report states that ''[o]perational risk is the risk that deficiencies in information systems or internal controls, human errors, or management failures will result in unexpected losses. As clearing and settlement systems become increasingly more dependent on information systems, the reliability of these systems is a key element in operational risk. The importance of operational risk lies in its capacity to impede the effectiveness of measures adopted to address other risks in the settlement process and to cause participants to incur unforeseen losses, which, if sizeable, could have systemic risk implications.'' [89]

Operational deficiencies within a broker-dealer, a clearing corporation, or at an exchange can increase the risk of loss to market participants and investors. These deficiencies can reduce the effectiveness of other measures that the settlement system takes to manage risk. For example, operational problems could impair the system's ability to complete settlement, create liquidity pressures on the market or participants, or hamper the system's ability to monitor and manage credit exposures. Possible operational failures include errors or delays in processing, system outages, insufficient capacity, or fraud by staff.[90]

The events of September 11, 2001, demonstrated how operational risk results from unforeseen events that can directly and severely affect market functions. Generally, financial crises involve both operational and credit issues. In contrast, the events of September 11, 2001, were unusual in that the settlement problems that did occur resulted almost exclusively from operational problems. No firm failed in the immediate aftermath of the terrorist attacks, although some firms were severely affected. If credit problems had arisen, the systemic consequences could have been severe.[91] However, the attacks did highlight the need to examine the risks in the clearance and settlement system, including the need for a resilient clearance and settlement infrastructure.[92]

E. Costs of Implementing a Shorter Settlement Cycle

1. SIA Business Case Report

In July 2000, the SIA published its T+1 Business Case Final Report (''SIA Business Case Report'') that included a cost-benefit analysis for transitioning to T+1. The SIA Business Case Report's major conclusions were the following: (1) The industry could shorten the settlement cycle to T+1 by June 2004; (2) moving to T+1 would cost approximately $8 billion but would save the industry $2.7 billion a year; and (3) moving to T+1 would reduce settlement exposure by 67%.[93]

The SIA estimated that settlement exposure would decrease by $250 billion in a T+1 environment. With fewer open positions at the clearing agencies, the SIA purported that T+1 settlement could reduce participants' clearing fund obligations by one-third. Additionally, operational risk for custodians would also be reduced as the number of pending settlements decreased.[94] The SIA further concluded that firms would benefit from an annual cost savings of approximately $2.7 billion, and would therefore recoup their investment three years after implementing a T+1 settlement cycle.

Since its publication, a number of critics questioned the assumptions and conclusions contained in the SIA's Business Case Report, arguing that it would cost the industry more than $8 billion and the cost recovery would take longer than three years. Critics also argued that the SIA's Business Case Report did not adequately quantify the risk reduction benefits of moving to T+1.[95]

[86] *Id.*

[87] *Id.* at 40.

[88] *See* Letter from Sarah A. Miller, Senior Government Relations Counsel, American Bankers Association, to Jonathan G. Katz, Secretary, Commission (June 30, 1993)(commenting on the proposal to adopt Rule 15c6–1).

[89] CPSS/IOSCO Report at 17.

[90] *Id.* at 40.

[91] Despite the widespread loss and destruction from the events of September 11, 2001, the U.S. financial system continued to perform its vital economic functions. ''Summary of 'Lessons Learned' from Events of September 11 and Implications for Business Continuity,'' staffs of the Federal Reserve Board, the New York State Banking Department, the Office of the Comptroller of the Currency, and the Securities and Exhange Commission, discussion document for meeting at the Federal Reserve Bank of New York (February 26, 2002).

Though the equity markets remained closed for four days and most bond trading was suspended for two, the U.S. clearance and settlement system was able to clear and settle trades executed on September 11. Largely by switching to back-up systems, DTC and NSCC continued clearing and settling trades due for settlement on the days following the attacks. As a result, the industry was able to sustain its business and resume trading once the markets reopened on Monday, September 17, 2001. The Depository Trust and Clearing Corporation, Annual Report 2001.

[92] *See supra* note 50.

[93] SIA Business Case Report at 7. Based on 1999 volumes, the SIA estimated decreased settlement exposure by $250 billion in a T+1 environment.

[94] *Id.*

[95] For example, the Investment Counsel Association of America (''ICAA'') has expressed disagreement with the findings made in the SIA's Business Case as they pertain to small and mid-sized investment managers. The ICAA stated that the SIA's study contained flaws regarding the number of the investment advisers affected by T+1 and underestimates the costs they will bear. *See* Letters from ICAA to Harvey L. Pitt, Chairman, Commission (October 9, 2001 and January 14, 2002).

Another report examined the impact of T+1 on the dealer community. *See* the Forrester Report, ''The Real Benefits of T+1,'' by Todd Eyler (September 2001). Forrester is an independent research company that ''analyzes the future of technology change and its impact on business,

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2. Costs to Cross-Border Trading

Reducing the settlement cycle is neither costless nor without risk. ''This is especially true for markets with significant cross-border activity because differences in time zones and national holidays, and the frequent involvement of multiple intermediaries, make timely confirmation more difficult. In most markets, a move to T+1 (perhaps T+2) would require a substantial reconfiguration of the trade settlement process and an upgrade of existing systems. For markets with a significant share of cross-border trades, substantial system improvements may be essential to shortening settlement cycles. Without such investments, a move to a shorter settlement cycle could generate increased settlement fails, with a higher proportion of participants unable to agree and exchange settlement data or to acquire the necessary resources for settlement in the time available. Consequently, replacement cost risk would not be reduced as much as anticipated and operational risk and liquidity risk could increase.''[96]

The level of cross-border activity is another significant factor that should be considered when determining whether to reduce the settlement cycle beyond T+3. During the 1990's, non-U.S. investors played an increasing role in the U.S. securities markets. For example, gross activity in U.S. equities by foreign holders totaled $6.0 trillion in 2001.[97] The SIA has projected that T+1 settlement would increase global competitiveness, synchronize settlement with other markets, better equip the U.S. market to handle increasing volumes, and lower transaction costs.[98]

On the other hand, because cross-border transactions in U.S. securities often involve differences in time zones, the use of multiple intermediaries, and the need to convert funds from one currency to another, the ability of a non-U.S. entity to settle trades could become significantly more difficult and expensive if these factors are not addressed adequately. As a result, a settlement cycle shorter than T+3 could make the U.S. securities markets less attractive rather than more attractive to non-U.S. entities.

F. Request for Comment

The Commission seeks comment on the current operation of Rule 15c6–1 and the costs and benefits of implementing a settlement cycle shorter than T+3. The Commission also seeks comment on alternative means to reduce risks in the system while operating in a T+3 settlement cycle. In order to evaluate fully the costs and benefits associated with shortening the settlement cycle, the Commission requests that commenters' estimates be accompanied by specific empirical data supporting their statements. The Commission seeks comments on the following:

1. Should the securities covered by Rule 15c6–1 be expanded? If so, what securities should be added? Why should these securities be added?

2. Given the increase in cross-border transactions and dually-traded securities over the past eight years, are the conditions set forth in the Commission's exemption order for securities traded outside the United States still appropriate? If not, why not? If the exemption should be modified, how should it be modified?

3. Are the conditions set forth in the Commission's exemption order for variable annuity contracts still appropriate? If not, why not? If the exemption should be modified, how should it be modified?

4. If the Commission were to mandate a settlement cycle shorter than T+3, should the Commission shorten the settlement cycle for firm commitment offerings priced after 4:30 p.m. Eastern time from T+4 to T+3 or T+2?

5. How would a shortened settlement cycle affect processing newly issued securities?

6. What systems and operational changes would be necessary in order to settle newly issued securities in a shortened settlement cycle?

7. How much would it cost to shorten the settlement cycle beyond T+3?

a. Is achieving 100% of confirmation/affirmation or matching on trade date a prerequisite for shortening the settlement cycle beyond T+3?

b. If so, what are the additional costs of shortening the settlement cycle after achieving 100% of confirmation/affirmation or matching on trade date?

8. What parties will bear the costs of moving to a settlement cycle shorter than T+3 (such as broker-dealers, investment managers, custodians, investors, and other market participants)?

9. What are the benefits of shortening the settlement cycle beyond T+3? Are there economic benefits in terms of reduction in credit and liquidity risk associated with shortening the settlement cycle beyond T+3?

10. Who will benefit from shortening the settlement cycle beyond T+3 (such as broker-dealers, investment managers, custodians, investors, and other market participants)?

11. How would shortening the settlement cycle affect efficiency and risk?

a. What are the risks associated with upgrading computer systems and transaction processing procedures to convert existing systems to new systems and the establishment of necessary linkages between other market participants?

b. Would shortening the settlement cycle beyond T+3 encourage market participants to implement additional risk management procedures? What additional operational risks would result from shortening the settlement cycle beyond T+3?

c. Would a shorter settlement cycle encourage market participants to invest in technology and automation that would enhance their operational efficiency? Would such investments improve market efficiency?

d. Are there alternatives to shortening the settlement cycle that would increase efficiency in the clearance and settlement system?

e. Are there alternatives to shortening the settlement cycle that would mitigate risks in the clearance and settlement process?

12. How would shortening the settlement cycle affect the information, benefits, and protections that investors have under present U.S. clearance and settlement arrangements?

13. How can the safety and soundness of the U.S. clearance and settlement system be increased while ensuring that investors can continue to obtain direct registration of their securities on issuer records in a less-than-three-day settlement environment?

14. What impact would a shortened settlement cycle for U.S. equities and corporate securities have on cross-border trading by non-U.S. entities of these instruments?

IV. Immobilization and Dematerialization of Securities Certificates

A. Introduction and Background

Securities have been issued in the U.S. using paper certificates since the eighteenth century.[99] Issuers

consumers, and society.'' For more information, visit their Web site *http://www.forrester.com.*

[96] CPSS/IOSCO Report at 10. *See generally* SIA Business Case Report at 18.

[97] SIA Annual Securities Industry Fact Book 2002 at 74. Available through the SIA.

[98] SIA Business Case Report at 8.

[99] A securities certificate evidences that the owner is registered on the books of the issuer as a shareholder. The shares, as distinct from the certificate, constitute an intangible right to participate in the capital and surplus of the company. Guttman, *Modern Securities Transfers,* Para. 1:5 at 1–15 (Thomson West 2002). Because the certificate is a negotiable instrument under state

traditionally used certificates to register securities ownership in the name of investors. Certificates are used by issuers both as means to evidence and transfer ownership and as a means to identify security owners to issuers, in an effort to develop company loyalty and to know who owns their securities. As trading volumes soared during the last half of the twentieth century, however, processing certificates became increasingly problematic.

The processing of securities certificates has long been identified as an inefficient and risk-laden mechanism by which to hold and transfer ownership. Because securities certificates require manual processing, their use can result in significant delays and expenses in processing securities transactions and can raise risk concerns associated with lost, stolen, and forged certificates.

Congress has recognized the problems and dangers that the movement of certificates presents to the safe and efficient operation of the U.S. clearance and settlement system, and has given the Commission responsibility and authority to address these issues.[100] Indeed, for over thirty years, the Commission and the financial services industry have worked together to reduce the reliance on securities certificates in the U.S. clearance and settlement system. The Commission believes that it is an appropriate time to consider further steps to remove securities certificates from the U.S. trading markets and our clearance and settlement system.

In the late 1960s and early 1970s, the securities industry experienced a ''Paperwork Crisis'' that nearly brought the industry to a standstill and directly or indirectly caused the failure of large number of broker-dealers.[101] This crisis primarily resulted from increasing trade volume overburdening an inefficient manual clearance and settlement systems. Deliveries to customers of both cash and securities were frequently late, and stock certificates were lost in the ''rising tide of paper.''[102] In its review of the Paperwork Crisis, Congress found that inefficient clearance and settlement procedures imposed unnecessary costs on investors and those acting on their behalf.[103] In an effort to increase efficiency and reduce risk, Congress amended the Exchange Act to vest the Commission with the authority and responsibility to establish a national system for the prompt and accurate clearance and settlement of transactions in securities (''National Clearance and Settlement System'').[104] Recognizing the problems associated with the use of securities certificates, Congress directed the Commission ''to end the physical movement of securities certificates in connection with the settlement among brokers and dealers of transactions in securities''[105] and authorized the Commission to establish a system for reporting missing, lost, counterfeit, and stolen securities.[106] Immobilization or dematerialization of securities certificates and consequently book-entry settlement of securities transactions and transfer of ownership have become large components of the operation of the U.S. clearance and settlement system, particularly in light of substantial trading volumes.[107]

Consistent with its Congressional directives, the Commission has long encouraged the use of alternatives to holding securities in certificated form in its effort to improve efficiencies and decrease risks associated with processing securities certificates. The Commission approved DTC's registration as a clearing agency operating as a depository in order to immobilize securities in a registered clearing agency and settle transactions by book-entry movements.[108] Registration of DTC as a clearing agency constituted an important step in achieving increased immobilization of securities in accordance with the goals established by Congress. The Commission also approved rules of the exchanges and the NASD that require their members to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities[109] and to require that before any security can be listed for trading it must have been made depository-eligible if possible.[110]

Today, DTC, one of the largest, if not the largest, depository in the world, provides book-entry depository and settlement services for the vast majority of U.S. transactions involving equities, corporate and municipal debt, money market instruments, American Depositary Receipts, and exchange-traded funds between broker-dealers and between broker-dealers and their institutional customers.[111] Many of the issues held at the depository, particularly municipal bonds and derivative securities, are fully dematerialized.

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commercial laws, it allows the registered owner to deliver the bundle of rights it represents to a third party without first having to change the registration on the books of the issuer. State commercial laws specify rules concerning the transfer of the rights that constitute securities and the establishment of those rights against the issuer and other parties. Official comment to Article 8–101, The American Law Institute and National Conference of Commissioners of Uniform State Laws, Uniform Commercial Code, 1990 Official Text with Comments (West 1991).

The first major issue of publicly traded securities occurred in 1790 when the federal government issued $80 million of bonds to refinance federal and state Revolutionary War debt. In 1792, five securities, two bank stocks and three government bonds, began trading on what was to become the NYSE. For a historical discussion of the development of trading on the exchange, *see http://www.nyse.com.*

[100] 15 U.S.C. 78q–1(a)(2); 15 U.S.C. 78q–1(e).

[101] Securities and Exchange Commission, Study of Unsafe and Unsound Practices of Brokers and Dealers, H.R. Doc. No. 231, 92nd Cong., 1st Sess. 13 (1971). Congress held extensive hearings to investigate the problems and ultimately enacted the Securities Acts Amendments of 1975.

[102] S. Rep. No. 94–75, 94th Cong., 1st Sess. 4 (1975). In addressing the Paperwork Crisis, Congress noted that rather than responding to investor needs and striving for more efficient ways to perform essential functions, securities markets had resisted industry modernization and had been ''unable or unwilling to respond promptly and effectively to radically altered economic and technological conditions.'' *Id.* at 1.

[103] 15 U.S.C. 78q–1(a)(1)(B).

[104] 15 U.S.C. 78q–1(a)(2)(A). Congress expressly envisioned the Commission's authority to extend to every facet of the securities handling process involving securities transactions within the United States, including activities by clearing agencies, depositories, corporate issuers, and transfer agents. *See* S. Rep. No. 75, 94th Cong., 1st Sess. at 55 (1975).

[105] 15 U.S.C. 78q–1(e).

[106] 15 U.S.C. 78q(f)(1).

[107] Immobilization of securities occurs where the underlying certificate is kept in a securities depository (or held in custody for the depository by the issuer's transfer agent) and transfers of ownership are recorded through electronic book-entry movements between the depository's participants' accounts. An issue is partially immobilized (as is the case with most equity securities traded on an exchange or securities association), when the street name positions are immobilized at the securities depository but certificates are still available to investors directly registered on the issuer's books. Dematerialization of securities occurs where there are no paper certificates available, and all transfers of ownership are made through book-entry movements.

[108] Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (October 3, 1983), [File No. 600–1, et. al.].

[109] Securities Exchange Act Release No. 32455 (June 11, 1993), 58 FR 33679 (June 18, 1993), [File Nos. SR–Amex–93–07; SR–BSE–93–08; SR–MSE–93–03; SR–NASD–93–11; SR–NYSE–93–13; SR–PSE–93–04; SR–PHIX–93–09] (order approving rules requiring members, member organizations, and affiliated members of the NYSE, NASD, AMEX, Midwest Stock Exchange, Boston Stock Exchange, Pacific Stock Exchange, and Philadelphia Stock Exchange to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities with another financial intermediary).

[110] Securities Exchange Act Release No. 35798 (June 1, 1995), 60 FR 30909 (June 12, 1995), [File Nos. SR–Amex–95–17; SR–BSE–95–09; SR–CHX–95–12; SR–NASD–95–24; SR–NYSE–95–19; SR–PSE–95–14; SR–Phlx–95–34] (order approving rules setting forth depository eligibility requirements for issuers seeking to have their shares listed on national securities exchanges).

[111] In 2002, DTC handled 224.3 million book-entry deliveries valued at nearly $104 trillion. 2002 DTCC Annual Report at 2.

To reduce the use of securities certificates by individual investors, particularly those of equities and corporate bonds, the Commission and industry representatives have explored various ways to provide for ownership registered in the name of individual investors without reliance on negotiable securities certificates. In 1985, the Division of Market Regulation held ''Securities Immobilization Workshops'' to discuss the use of central depositories to immobilize securities certificates and the development of book-entry systems where retail investors could register their securities directly with the issuers using issuer or transfer agent operated book-entry systems.[112]

The 1987 Market Break also prompted numerous studies recommending specific reforms to address perceived weaknesses in the clearance and settlement systems.[113] The Bachmann Report, discussed above, made a number of suggestions including eliminating the delivery of ''physical certificates'' through the use of central depositories, but it did not advocate eliminating the use of the certificate for retail investors.[114] However, the Report argued that while investors should have the right to hold physical certificates, that right should not come at the expense of safety of the markets. The Bachmann Report strongly encouraged the Commission to explore the possibility of requiring retail investors to return their certificates to the system before trading.[115]

In 1990, the Commission held a Roundtable on Clearance and Settlement to discuss the implementation of the recommendations of the Group of Thirty's U.S. Working Committee regarding clearance and settlement.[116] Participants in the Roundtable noted that the pressure to have securities available for settlement in shorter settlement time frames (at the time the industry was contemplating moving from T+5 to T+3 settlement) would increase the need for immobilizing securities certificates and the use of book-entry transfer at the retail level.[117] The Roundtable participants envisioned a transfer agent operated book-entry registration system that would allow investors to be ''directly registered'' in electronic form on the books of the issuer. Investors would receive a periodic statement reflecting their ownership interest and would retain the option of selling the securities through brokers by notifying transfer agents to move the securities from the books of the issuers to the books of the brokers. Certificates would also be available upon request.

In 1992, the Securities Transfer Association, the Corporate Transfer Agents Association, the Securities Industry Committee of the American Society of Corporate Secretaries, and DTC formed an ad hoc committee to further develop the concept of direct registration, modeling it after the systems used by transfer agents in their administration of issuers' dividend reinvestment and stock purchase programs. The committee was expanded to include representatives from the SIA and DTC in order to develop both the electronic link by which securities could be transferred between transfer agents and broker-dealers and to develop operational guidelines.

In 1994, the Commission issued a concept release seeking public comment on the policy implications and the regulatory issues raised by the use of direct registration.[118] A vast majority of commenters supported the concept, but many also expressed continued support for shareholders' abilities to obtain securities certificates if so desired.[119]

The culmination of these efforts is the establishment of the Direct Registration System (''DRS''), which is operated by DTC.[120] DRS allows an investor to establish either through the issuer's transfer agent or through the investor's broker-dealer a book-entry position on the books of the issuer, and to electronically transfer her position between the transfer agent and the broker-dealer. DRS, therefore, allows an investor to have securities registered in her name without having a certificate issued to her and the ability to electronically transfer her securities to her broker-dealer in order to effect a transaction without the risk and delays associated with the use of certificates. In 1996, the NYSE modified its listing criteria to permit listed companies to issue securities in book entry form provided that the issue is included in DRS.[121] Similarly, the NASD modified its rule to require that if an issuer establishes a direct registration program, it must participate in an electronic link with a securities depository in order to facilitate the electronic transfer of the issue.[122] On July 30, 2002, the Commission approved a rule change proposed by the NYSE to amend NYSE Section 501.01 of the NYSE Listed

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[112] ''Progress and Prospects: Depository Immobilization of Securities and Use of Book-Entry Systems,'' Staff Report, Division of Market Regulation, Commission (June 14, 1985).

[113] *See e.g.,* Division of Market Regulations, The October 1987 Market Break (February 1988); Working Group on Financial Markets, Interim Report to the President of the United States (May 1988).

[114] *Supra* note 41.

[115] Some industry representatives continue to recommend the Commission adopt regulations that would permit the sale of securities only when the securities have been ''returned to the system'' (*i.e.,* when certificates either are in the possession of the broker-dealer or are accessible to the broker-dealer through a direct registration system or through a custodian or other financial intermediary). *See e.g.,* ''Defining 'Return to the System Prior to Entering Sale,' '' Physical Certificates Subcommittee, STP Steering Committee, SIA (November 2002).

[116] Concerned with the international financial system following the 1987 market break, the 1989 G30 Report offered recommendations for reducing risk and improving efficiency in the world's clearance and settlement systems for corporate securities. 1989 G30 Report, *supra* note 56. For more information on these recommendations, *see* Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891 (October 13, 1993). Subsequently, the U.S. Working Committee was formed to study the existing U.S. clearance and settlement systems and to recommend appropriate changes based upon the Group of Thirty's recommendations. Based upon its review, the U.S. Working Committee issued its report, ''Implementing the Group of Thirty Recommendations in the United States,'' U.S. Working Committee, Group of Thirty (November 1990).

[117] Providing Alternatives to Certificates For the Retail Investor, Group of Thirty, U.S. Working Committee, Clearance and Settlement Project (August 1991).

[118] Securities Exchange Act Release No. 35038 (December 1, 1994), 59 FR 63652 (December 8, 1994) [File No. SR–34–94] (''Concept Release'').

[119] Referring in the Concept Release to the then recently adopted Rule 15c6–1, the Commission stated that ''faster trade settlements should not require investors to forego the benefits of direct registration,'' and noted that ''Rule 15c6–1 does not require customers to leave funds, securities, or both subject to the broker-dealers' possession or control.''

[120] With such a system in place, investors would have three choices as to how to hold their securities: (1) In street name at their broker-dealer; (2) in certificated form; or 3) in electronic form on the books of the issuer. This transfer agent operated book-entry system eventually was realized in the current DRS. For more information on alternatives to holding securities certificates, *see http://www.sec.gov/investor/pubs/holdsec.* For a description of DRS and the DRS facilities administered by DTC, *see* Securities Exchange Act Release Nos: 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR–DTC–96–15] (order granting approval to establish DRS); 41862 (September 10, 1999), 64 FR 51162 (September 21, 1999), [File No. SR–DTC–99–16] (order approving implementation of the Profile Modification System); 42704 (April 19, 2000), 65 FR 24242 (April 25, 2000), [File No. SR–00–04] (order approving changes to the Profile Modification System); 43586 (November 17, 2000), 65 FR 70745 November 27, 2000), [File No. SR–00–09] (order approving the Profile Surety Program in DRS); 44696 (August 14, 2001), 66 FR 43939 (August 21, 2001), [File No. SR–DTC–2001–07] (order approving movement of DRS issues into the Profile Modification System and the establishment of the ''S'' position as the default in DRS).

[121] Securities Exchange Act Release No. 37937 (November 8, 1996), 61 FR 58728 (November 18, 1996), [File No. SR–NYSE–96–29].

[122] Securities Exchange Act Release No. 39369 (November 26, 1997), 62 FR 64034 (December 3, 1997), [File No. SR–97–51].

Company Manual to allow a listed company to issue securities in a dematerialized or completely immobilized form and therefore not send stock certificates to record holders, provided the company's stock is issued pursuant to a dividend reinvestment program, stock purchase plan, or is included in DRS.[123]

Use of DRS has expanded substantially since its inception in 1996, but continues to remain limited relative to the total number of issuers. As of November 2003, approximately 600 issuers and 17 transfer agents participate in DRS with over 37 million shareholders holding their securities in DRS.[124] Issuers, transfer agents, and broker-dealers continue to meet in order to explore expanding the use of DRS to non-equity products and integrate new technologies that would make the system more effective and efficient.

B. CPSS/IOSCO and G30 Recommendations

Many in the international community view the elimination of securities certificates as a critical component in the overall plan to make markets more efficient and to minimize risk in the world's clearance and settlement system. Recommendation 6 of the CPSS/IOSCO Report states: ''Securities should be immobilized or dematerialized and transferred by book entry in CSDs (central securities depositories) to the greatest extent possible.'' [125] The CPSS/IOSCO Report states that maintaining custody of securities in a central securities depository (such as DTC) will significantly reduce costs associated with securities settlement and custody through economies of scale and will increase efficiency through increased automation. The CPSS/IOSCO Report notes that immobilization or dematerialization of securities also reduces or eliminates certain risks, such as the destruction or theft of certificates. The CPSS/IOSCO Report recognizes that it may not be necessary to achieve complete immobilization to realize the benefits of central securities depositories as long as the most active market participants immobilize their holdings. In practice, retail investors may not be prepared to give up their certificates. Less active investors who choose to hold certificates could continue to do so; however, they should bear the associated costs.[126]

Recommendation 1 of the 2003 G30 Report endorses complete dematerialization through the comprehensive use of central securities depositories for all records of ownership although the report recognizes immobilization as an acceptable step towards dematerialization if it can be achieved more quickly and efficiently than dematerialization.[127] The 2003 G30 report maintains that dematerialization should be considered best practice in order to achieve fast and efficient clearing, settlement, and asset servicing and to prevent forgery, theft, or other misappropriation.

C. The Continuing Risks and Costs of Certificates in the U.S. Trading Markets

Virtually all mutual fund securities, government securities, options, and municipal bonds in the U.S. are dematerialized and most of the equity and corporate bonds in the U.S. market are either immobilized or dematerialized. While the U.S. markets have made great strides in achieving immobilization and dematerialization for institutional and broker-to-broker transactions, many industry representatives believe that the small percentage of securities held in certificated form impose unnecessary risk and expense to the industry and to investors. In addition, the SIA identified the elimination of securities certificates in the U.S. marketplace as a necessary ''building block'' to achieve shorter settlement timeframes.[128] More recently, the SIA has requested that the Commission consider specific regulatory initiatives to achieve this goal.[129] The SIA contends that despite the fact that only a small portion of securities positions remains certificated and that requests for certificates are declining, the risks and costs associated with processing the remaining certificates in the marketplace are substantial and avoidable. These costs are ultimately passed along to investors generally, rather than only those holding their securities in certificated form.

The most common risk is that associated with lost or stolen certificates. Between 1996 and 2000, the SIA estimated that an average of 1.7 million certificates were reported lost or stolen each year.[130] In 2001, that figure increased to approximately 2.5 million certificates. Industry experts expect the number of certificates reported lost or stolen to continue to rise.[131] The events of September 11, 2001, further underscored the risks associated with certificates. Tens of thousands of certificates that were being processed or were in vaults at broker-dealers and banks located in and around the World Trade Center at the time of the attack were either destroyed, lost, or were not accessible when offices located around the site were destroyed or were inaccessible for some period of time. Settlement activity for immobilized or dematerialized securities continued at DTC without significant delay or problems but DTC had to suspend certificate processing for four days until it could regain full access to its facilities.

The SIA also raised concerns about the significant and unnecessary costs associated with processing securities certificates. The SIA estimates that annual direct and indirect cost of handling certificates in the U.S. market exceeds $234,000,000.[132] Direct costs include those associated with processing and supporting certificates at the broker-dealers or custodial banks, including expenses for shipping, medallion guarantees, custody, and conducting inventory for securities held in the firm's vault. According to the SIA, firms also face an opportunity cost in processing the certificates as these resources that must be devoted to this operation could be used toward other risk reducing initiatives or technological and service upgrades.

When a broker-dealer receives certificates to sell, often both the registered representative in the front office and staff in the operations area in the back office at the broker-dealer examine the certificate for negotiability. Among others, broker-dealers must make inquiries pursuant to the

[123] Securities Exchange Act Release No. 46282 (July 30, 2002), 67 FR 50972 (August 6, 2002), [File No. SR–NYSE–2001–33].

[124] *See supra* note 120 for more information on alternative methods of holding securities.

[125] CPSS/IOSCO Report at 13.

[126] *Id.*

[127] 2003 G30 Report at 67. Recommendation 1 states, ''Infrastructure providers and relevant public authorities should work with issuers and securities industry participants to eliminate the issuance, use, transfer and retention of paper securities certificates without delay* * *'' G30 believes that the use of paper, unautomated communication and manual recording in securities processing is time-consuming, expensive and prone to clerical error.

[128] SIA Business Case Report, *supra* note 5. The securities industry has long supported the elimination of certificates. ''The Securities Markets—A Report with Recommendations,'' NYSE (August 5, 1971).

[129] Letter to Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission, from Donald Kittell, Executive Vice President, SIA (August 20, 2003); letter to Annette Nazareth, Director, Division of Market Regulation, Commission, from Donald Kittell, Executive Vice President, SIA (March 24, 2003) (''Nazareth Letter'').

[130] *Id.*

[131] *E.g.,* AT&T conducted a reverse split in November 2002 that required shareholders to remit their certificates in exchange for a book-entry position in DRS. AT&T estimated that approximately 30% of its 2.7 million certificates outstanding at the time of the corporate action would be reported lost by shareholders.

[132] Nazareth Letter, *supra* note 129.

Commission's Lost and Stolen Securities Program (''LSSP'').[133] Brokers are charged for each inquiry. If the broker-dealer believes that the certificate is negotiable and does not receive a negative LSSP report, the certificate is forwarded to DTC for deposit into the broker-dealer's account at DTC. DTC then credits the broker-dealer's account and forwards the certificate to the transfer agent for reregistration into DTC's nominee name. If the transfer agent determines the certificate is not transferable, the transfer agent returns the certificate to DTC. DTC reverses the deposit credit to the broker-dealer's account and returns the certificate to the broker-dealer, usually many days after the trade has settled and sale proceeds have been paid or credited to the customer's account. The rejection of a security after settlement date exposes the customer to the costs and risks that she may have to purchase replacement securities and exposes the broker-dealer to the costs and risks associated with collecting should the customer be unable to obtain replacement securities.

Another potential cost to investors is the cost of replacing a lost certificate. An investor who had lost her certificate, or whose certificate was stolen, generally must obtain a surety bond to protect the transfer agent from the risk that the lost or stolen certificate will reappear before the transfer agent will issue a replacement certificate. Pursuant to industry guidelines, most transfer agents charge investors two per cent of the current market value of the securities for such a surety bond.

There are also many indirect costs associated with certificates. DTC costs include direct and indirect personnel and technology costs related to processing certificates.[134]

Transfer agent costs include personnel, facilities, and technology needed to process, custody, store, insure, and inventory unissued and cancelled certificates. All costs, both direct and indirect, the SIA notes, are ultimately borne by investors.

The SIA maintains that investors would realize many benefits from dematerializing securities issues, including decreased opportunity for fraud, earlier access to issuer proceeds, timelier receipt of corporate action entitlements, transparent audit trail of ownership, consolidated record keeping, and increased ease in estate liquidations.[135] While some investors may remain attached to securities certificates, the SIA's research shows that those 55 years of age and younger are receptive to dematerialization.[136]

The SIA believes that given technological advances, the increasing acceptance of book-entry positions as the standard for evidencing ownership and the availability of DRS, a concerted effort should be made to immobilize or dematerialize the remaining equity and corporate bond securities. Specifically, the SIA has requested that the Commission consider regulatory action that would either directly or indirectly require new issues of publicly traded companies to be issued only in book-entry form and to be eligible for DRS.[137] To address the matter of companies whose securities are already in the public market, the SIA advocates requiring all companies listed on an exchange or Nasdaq to have their existing shares be made eligible for DRS and to issue any new securities only in book-entry form.

Finally, the SIA urged the Commission to adopt regulations that would gradually eliminate the ability of investors to obtain certificates from their broker-dealers and to eliminate the ability of broker-dealers to obtain a certificate through DTC. Under such a regulatory scheme, investors who wanted certificates (if an issuer were still issuing certificates) would have to directly contact the issuer's transfer agent.

D. Discussion and Request for Comment

As discussed above, the Commission has long advocated a reduction in the use of certificates in the trading environment by immobilizing or dematerializing securities. These efforts are consistent with Congress's directive to end the physical movement of securities in connection with settlement among brokers and dealers. The use of certificates increases the costs and risks of clearing and settling securities for all parties processing the securities, including those involved in the National Clearance and Settlement System. Most of these costs and risks are ultimately borne by investors.

While the Commission endorses the concepts of immobilization or dematerialization, the Commission recognizes that they raise significant issues. The ability to hold securities certificates to evidence ownership in a corporation has a long tradition. There are perceived advantages, as well as disadvantages, to holding securities in the form of physical certificates instead of street-name registration.[138] DRS now provides a viable alternative to street name holding for some investors who do not want to hold securities at a broker-dealer, but only for those investors who have an issuer and transfer agent that offer DRS services.

Although the Commission believes investors should have the ability to register securities in their own names, the Commission also believes it is time to explore ways to further reduce certificates in the trading environment. There is significant risk, inefficiency, and cost related to the use of securities certificates. The possibility exists that investors' attachment to the certificate may be based more on sentiment than real need. Today, non-negotiable records of ownership (*e.g.*, account statements) evidence ownership of not only most securities issued in the U.S.

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[133] The Commission requires, among others, every national securities exchange, registered securities association, broker, dealer, transfer agent, registered clearing agency, and many banks to report to the Commission's LSSP designee, the Securities Information Center (''SIC'') the discovery of missing, lost, counterfeit, or stolen securities certificates. SIC operates a centralized database that records lost and stolen securities. 15 U.S.C. 78q(f)(1)(A) and 17 CFR 240.17f-1. These entities also must inquire of the database as to whether certificates they receive have been reported to the LSSP. 15 U.S.C. 78q(f)(1)(B).

[134] At the end of 1999, DTC sent an average of 11,460 certificates to investors each day. By the end of 2002, that number had decreased to an average of 5,454 certificates issued per day.

[135] Nazareth Letter, *supra* note 129.

[136] In an attempt to better understand retail investors who want their securities in certificated form, the SIA conducted a survey to profile customers who had requested a certificate over a six-month period. Approximately 76% of investors who responded were over 55 years of age. Nearly all respondents had been investing for over ten years but had made very few transactions per month. Just over one-half of the respondents own a personal computer and use the Internet. Even though 62% thought is was ''very important'' to retain the option of requesting a physical certificate, 50% of these investors indicated they would continue investing if certificates were not available. SIA Business Case Report, supra note 5.

[137] Nazareth Letter, *supra* note 129.

[138] *See* Holding Your Securities—Get the Facts, *http://www.sec.gov/investor/pubs/holdsec http://www.sec.gov/investor/pubs/holdsec* (as examples of advantages, noting that with certificates the issuer knows how to reach the investor and will send annual and other reports, dividends, proxies, and other communications directly to the investor and that the investor may find it easier to pledge securities as collateral for a loan if they are held in the form of physical certificates; as examples of disadvantages, noting that when investors want to sell stock, they will have to send their certificates to their brokers or the companies' transfer agent to execute the sales, which may make it harder to sell quickly, that if investors lose their certificates, they may be charged a fee for replacements, and that if the investors move, they will have to contact the companies with their change of address in order not to miss any important mailings); Providing Alternatives to Certificates For the Retail Investor, Group of Thirty, U.S. Working Committee, Clearance and Settlement Project (August 1991), at 9, 25–26 (discussing various ''needs'' and ''concerns or problems'' expressed on behalf of investors regarding certificates, including that with certificates the investor can sell securities through the broker-dealer of his or her choice, without having to transfer a brokerage account).

but also other financial assets, such as money in bank accounts.

Therefore, we seek comment on the following:

1. Should securities be completely immobilized or dematerialized in the U.S.? If so, which would better serve the market—complete immobilization or dematerialization? Why?

2. What are the costs and benefits of complete immobilization or dematerialization?

3. Are there operational, legal, or regulatory impediments to immobilization or dematerialization?

4. What advantages might certificates have over securities held in book-entry-only form (*i.e.*, proof of ownership in the event of a loss of electronic records of ownership)? What regulatory initiatives should be considered to address these advantages if the markets were to move away from certificates?

5. Should the existence of a viable, widely available direct registration system that preserves the benefits of holding securities in the form of physical certificates be a prerequisite to complete immobilization or dematerialization?

6. What should be done to increase the availability and use of DRS or to otherwise improve DRS? For example, should the Commission adopt operational or processing rules specifically for processing book-entry transactions (*i.e.*, DRS and dividend reinvestment and stock purchase plans), including, but not limited to, timeframes for processing these transactions?

7. What are the back office costs at broker-dealers to process securities certificates? What are the costs at transfer agents to process securities certificates? How do these costs compare to the costs of processing book-entry securities?

8. What should be done to encourage more companies to issue their securities in a completely immobilized or dematerialized format? Should publicly traded companies be required to do so?

9. What can broker-dealers do to facilitate complete immobilization or dematerialization on both the retail and institutional customer levels? Are registered representatives sufficiently educated about DRS and do they communicate to investors available options to holding a certificate?

10. What can transfer agents do to facilitate complete immobilization or dematerialization on both the issuer and investor level?

11. What incentives or disincentives can be employed to discourage shareholders from requesting certificates? Will investors be less inclined to request a certificate if they were required to pay more to obtain, transfer, and trade certificated securities than book-entry securities? Should investors who choose to hold certificates bear a greater amount of the overall costs associated with producing and processing those certificates?

12. Are any rules or regulations needed to enhance the safety of book-entry systems operated by transfer agents or broker-dealers?

13. What can be done to engender public confidence in certificate-less systems?

V. Solicitation of Additional Comments

In addition to the areas for comment identified above, we are interested in any other issues that commenters may wish to address relating to trade confirmation, settlement cycles and physical securities. Please be as specific as possible in your discussion and analysis of any additional issues.

By the Commission.

Dated: March 11, 2004.

Lynn Taylor,

Assistant Secretary.

Appendix 1

CPSS–IOSCO Task Force

Recommendations for Securities Settlement Systems

Legal Risk

1. Legal Framework

Securities settlement systems should have a well-founded, clear, and transparent legal basis in the relevant jurisdictions.

Presettlement Risk

2. Trade Confirmation

Confirmation of trades between direct market participants should occur as soon as possible after trade execution, but no later than trade date (T+0). Where confirmation of trades by indirect market participants (such as institutional investors) is required, it should occur as soon as possible after trade execution, preferably on T+0, but no later than T+1.

3. Settlement Cycles

Rolling settlement should be adopted in all securities markets. Final settlement should occur no later than T+3. The benefits and costs of a settlement cycle shorter than T+3 should be assessed.

4. Central Counterparties

The benefits and costs of a central counterparty should be assessed. Where such a mechanism is introduced, the central counterparty should rigorously control the risks it assumes.

5. Securities Lending

Securities lending and borrowing (or repurchase agreements and other economically equivalent transactions) should be encouraged as a method for expediting the settlement of securities transactions. Barriers that inhibit the practice of lending securities for this purpose should be removed.

Settlement Risk

6. Central Securities Depositories (CSDs)

Securities should be immobilised or dematerialised and transferred by book-entry in CSDs to the greatest extent possible.

7. Delivery Versus Payment (DVP)

Securities settlement systems should eliminate principal risk by linking securities transfers to funds transfers in a way that achieves delivery-versus-payment.

8. Timing of Settlement Finality

Final settlement on a DVP basis should occur no later than the end of the settlement day. Intraday or real-time finality should be provided where necessary to reduce risks.

9. CSD Risk Controls to Address Participant Defaults

Deferred net settlement systems should institute risk controls that, at a minimum, ensure timely settlement in the event the participant with the largest payment obligation is unable to settle. In any system in which a CSD extends credit or arranges securities loans to facilitate settlement, best practice is for the resulting credit exposures to be fully collateralised.

10. Cash Settlement Assets

Assets used to settle the cash leg of securities transactions between CSD members should carry little or no credit or liquidity risk. If central bank money is not used, steps must be taken to protect CSD members from potential losses and liquidity pressures arising from the failure of a settlement bank.

Operational Risk

11. Operational Reliability

Sources of operational risk arising in the clearing and settlement process should be identified and minimised through the development of appropriate systems, controls, and procedures. Systems should be reliable and secure, and have adequate, scaleable capacity. Contingency plans and backup facilities should be established to allow for timely recovery of operations and completion of the settlement process.

Custody Risk

12. Protection of Customers' Securities

Entities holding securities in custody should employ accounting practices and safekeeping procedures that fully protect customers' securities. It is essential that customers' securities be protected against the claims of a custodian's creditors.

Other Issues

13. Governance

Governance arrangements for CSDs and central counterparties should be designed to fulfill public interest requirements and to promote the objectives of owners and users.

14. Access

CSDs and central counterparties should have objective and publicly disclosed criteria for participation that permit fair and open access.

15. Efficiency

While maintaining safe and secure operations, securities settlement systems should be cost effective in meeting the requirements of users.

16. Communication Procedures and Standards

Securities settlement systems should use or accommodate the relevant international communication procedures and standards in order to facilitate efficient settlement of cross-border transactions.

17. Transparency

CSDs and central counterparties should provide market participants with sufficient information so that they can accurately identify and evaluate the risks and costs associated with using the CSD or central counterparty services.

18. Regulation and Oversight

Securities settlement systems should be subject to regulation and oversight. The responsibilities and objectives of the securities regulator and the central bank with respect to SSSs should be clearly defined, and their roles and major policies should be publicly disclosed. They should have the ability and the resources to perform their responsibilities, including assessing and promoting implementation of these recommendations. They should cooperate with each other and with other relevant authorities.

19. Risks in Cross-Border Links

CSDs that establish links to settle cross-border trades should design and operate such links to reduce effectively the risks associated with cross-border settlements.

[FR Doc. 04–5981 Filed 3–17–04; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Thursday,
March 18, 2004

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Drug and Alcohol Management Information System Reporting; Correction; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. OST–2002–13435]

RIN 2105–AD35

Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Drug and Alcohol Management Information System Reporting; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction; technical amendment.

SUMMARY: This document makes corrections to the final regulations (Appendix J to part 121) published in the **Federal Register** on December 31, 2003 (68 FR 75455), which revised reporting requirements and guidance for drug and alcohol testing for each Department of Transportation (DOT) agency.

DATES: Effective on December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Diane J. Wood, 202–267–8442.

SUPPLEMENTARY IMFORMATION:

Background

The final regulation that is the subject of this correction resulted from a rulemaking to conform to a regulation change adopted by DOT. DOT changed their regulations to simplify the reporting process for drug and alcohol testing by requiring that each agency in the department use the same one-page form to record test results. The DOT rule resulted in a reduction in the data elements for which an employer must account, and a reduction in paperwork that must be submitted to each DOT agency.

The DOT rule also required that each agency within the department change their specific regulations to conform to the new standards required by DOT.

Need for Correction

As published, the final regulation contains an error that we hoped to correct during the rulemaking. In our section-by-section discussion about the changes we intended to make to Appendix J of part 121, we said we would change the title of section IV.B to make the title consistent with the same section in Appendix I of part 121. We failed to make that change in the rule language.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

■ Accordingly, 14 CFR part 121 is corrected by making the following correcting amendment:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for 14 CFR part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–55702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105, 46301.

■ 2. Revise section IV.B to read as follows:

*IV. Handling of Test Results, Record Retention, and Confidentiality * * **

* * * * *

B. Annual Reports

* * * * *

Issued in Washington, DC, on March 12, 2004.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 04–6097 Filed 3–17–04; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Thursday,
March 18, 2004

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 158

Revisions to Passenger Facility Charge Rule for Compensation to Air Carriers; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 158

[Docket No. FAA–2002–13918; Amendment No.158–2]

RIN 2120–AH43

Revisions to Passenger Facility Charge Rule for Compensation to Air Carriers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the passenger facility charge (PFC) regulations by changing the amount of money that an air carrier may keep as compensation for collecting and handling PFC revenue for public agencies. Specifically, this action allows air carriers to keep $0.11 of each PFC they collect. This action is pursuant to a statutory requirement to establish a rate of compensation for air carriers that reflects the average necessary and reasonable expenses for collecting and handling PFCs.

DATES: Effective May 1, 2004.

FOR FURTHER INFORMATION CONTACT: Joseph Hebert, Passenger Facility Charge Branch, APP–530, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3845; facsimile (202) 267–5302.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70, pages 19477–78), or you may visit *http://dms.dot.gov.*

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at *http://www.faa.gov/avr/arm/sbrefa.htm,* or by e-mailing us at *9–AWA–SBREFA@faa.gov.*

Background

The Aviation Safety and Capacity Expansion Act of 1990 (ASCE Act), codified under 49 U.S.C. 40117, set up the passenger facility charge (PFC) program. The ASCA Act allows public agencies to impose a PFC of $1, $2, or $3 for each enplaned passenger at a commercial service airport the public agency controls. Public agencies use the money from such PFC collections to finance FAA-approved, eligible airport-related projects. Section 158.53 of title 14, Code of Federal Regulations prescribes the amount of money that air carriers may retain as compensation for collecting and handling PFCs. Initially, § 158.53 allowed air carriers to keep $0.12 of each PFC remitted to recover the costs of setting up $1, $2, or $3 charges under the PFC program. On June 28, 1994, FAA reduced the rate of compensation from $0.12 to $0.08 for each PFC collected because air carriers should have recovered the cost of program implementation by that time. Currently, air carriers may keep $0.08 of each PFC collected and remitted.

In April 2000, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) changed the PFC program to allow public agencies to collect PFCs of $4 or $4.50. The issue of air carrier compensation rose again during the congressional proceedings leading up to the passage of AIR–21. In House Report 106–513, which accompanied AIR–21, Congress noted that several air carriers communicated to the conferees their views that compensation at $.08 is too low. Congress urged FAA to give the air carriers an opportunity to support their argument in a rulemaking action.

On April 27, 2000, the Department of Transportation Office of the Inspector General (OIG) issued a memorandum recommending to FAA procedures for conducting rulemaking on PFC collection costs. Specifically, OIG suggested the type of data FAA should collect to ensure the agency receives the information necessary for evaluation. Further, OIG recommended accounting and audit procedures that ensure the costs are supportable.

To be responsive to Congress and OIG, FAA initiated contacts in April 2000 with the air carrier industry to learn about cost categories compatible with air carrier cost accounting capabilities that might meet the specifications of OIG. In addition, FAA consulted with independent accountants familiar with the accounting methods of the air carriers to learn the extent to which independent accountants would be able to determine if costs reported by air carriers are ''supportable.'' Based on these contacts, FAA sent a letter to the air carriers suggesting cost categories and instructions for collecting incremental costs associated with PFC collection, handling, remittance, reporting, recordkeeping, and/or auditing to facilitate the collection of data to be evaluated. These categories consisted of the following:

(a) Credit card fees;
(b) Audit fees;
(c) PFC disclosure;
(d) Reservations;
(e) Passenger service;
(f) Revenue accounting, data entry, accounts payable, tax, and legal;
(g) Corporate property department;
(h) Training reservations, ticket agents, and other departments;
(i) Carrier ongoing information systems;
(j) Computer reservation systems ongoing;
(k) PFC absorption;
(l) Airline Tariff Publishing Company (ATPCO);
(m) Airline Reporting Corporation (ARC); and
(n) Interest income.

FAA noted in its letter that listing an item in the cost definitions did not necessarily represent a final FAA determination that the item represents a cost of collecting and remitting PFC revenue that is reimbursable from PFC revenue. Rather, some items were included because they had been proposed by at least one air carrier as collection or handling costs. From the responses to the letter, FAA found the average PFC handling fee reported by

the air carriers was $0.0896 for each $3 PFC collected in 1999 and $0.0995 for each $3 PFC remitted in 1999. Had a $4.50 PFC been in place that year, the air carriers estimate the increase in their costs would have raised their overall cost to $0.1065 for each $4.50 PFC collected and $0.1184 for each $4.50 PFC remitted. On November 20, 2002, FAA issued Notice of Proposed Rulemaking (NPRM) No. 02–19, ''Revisions to Passenger Facility Charge Rule for Compensation to Air Carriers,'' (67 FR 70878, November 27, 2002). In that rulemaking action, FAA proposed to amend 14 CFR 158.53 to allow air carriers to keep $0.10 of each PFC they collect in calendar years 2002 through 2004. From 2005 forward, the amount would increase to $0.11 for each PFC collected. FAA based its proposal on cost data received from Alaska Airlines, Inc., American Airlines, Inc., Continental Airlines, Inc., Delta Air Lines, Inc., Northwest Airlines, Inc., Southwest Airlines Company, TransWorld Airlines, Inc., United Airlines, Inc, and US Airways, Inc. FAA initially reviewed the data submitted by the air carriers to check for consistent data categories and formats, and then consolidated all the information into a single summary table. This table can be found in the preamble to the NPRM (67 FR 70880, November 27, 2002). FAA concluded the cost categories used to determine the amount of compensation for this rule represented the incremental costs directly associated with PFC collection, handling, remittance, reporting, recordkeeping and auditing.

Discussion of Comments

FAA received 11 comments in response to Notice No. 02–19. The commenters include airport operators, scheduled air carriers, and aviation industry trade associations. Most of the commenters support FAA's proposal to increase carrier compensation for handling PFCs. However, many commenters disagree with how FAA determined the proposed rate of compensation.

FAA received comments from the Allegheny County Airport Authority (ACAA); the Port Authority of New York and New Jersey (PANYNJ); the International Air Transport Association (IATA); the Maryland Aviation Administration (MAA); Southwest Airlines Company (Southwest); the Airports Council International—North America (ACI–NA) jointly with the American Association of Airport Executives (AAAE); American Airlines, Inc. (American); United Airlines, Inc. (United); the Air Transport Association (ATA); and Continental Airlines, Inc. (Continental).

Compensation Based on Remitted PFCs vs. Collected PFCs

Comments: Although ACAA, PANYNJ, and MAA support FAA's proposal to increase the rate of carrier compensation, they disagree with FAA's proposal to change the basis for compensation from PFCs remitted to PFCs collected. They assert that changing the basis for calculating compensation might erode the money available to public agencies.

PANYNJ and MAA contend the difference between these compensation bases becomes apparent when passengers refund tickets. ACAA asserts that if carriers receive compensation for PFCs collected, then airports would be subsidizing the carriers for passengers who cancel their reservations and never travel through airports. In such instance, carriers would not remit PFCs to the airports. ACAA argues that FAA's proposal violates 49 U.S.C. 40117, which, according to ACAA, requires the Secretary to base compensation solely on money paid to the public agency. The commenters suggest that FAA reconsider the basis for compensation and clarify the issue of refunded tickets.

United supports the use of PFCs collected as the basis of carrier compensation. United claims that Congressional intent for air carrier compensation is based on PFCs collected and contends that FAA's past rulemaking supports this position. United also claims that when FAA promulgated the rules for carrier compensation, the agency only requested data based on collected PFCs, not remitted PFCs. Further, United contends that FAA's past rulemaking action appeared to use the terms ''collected'' and ''remitted'' interchangeably. Based on the above, United requests FAA to issue a statement that either (i) clarifies that carriers are (and have been) entitled to retain the designated amount of each PFC collected or (ii) recognizes explicitly that a dispute exists over the interpretation of the existing rule and states that FAA is expressing no view as to whether the old compensation fee was based on PFCs collected or PFCs remitted, or whether the term ''remitted'' was used interchangeable with (and deemed to have the same meaning as ''collected'' under the old rule).

FAA Response: FAA disagrees. The intent of FAA's proposal is to set a rate of carrier compensation on a basis that is clearly defined. FAA notes that 49 U.S.C. 40117 only requires the rate of compensation to be ''* * * a uniform amount the Secretary determines reflects the average necessary and reasonable expenses * * * incurred in collecting and handling the fee.'' It does not require the Secretary to base the rate of compensation solely on money paid to the public agency.

The issue of compensation for handling refunded tickets has been a long-standing concern for both airports and air carriers. The preamble discussion in the NPRM addresses the issue of refunded tickets, where FAA notes that regardless of whether air carriers receive compensation based on PFCs collected or remitted, the aggregate amount of PFC revenue kept by the carriers for compensation is not significantly different.

Also, FAA notes that carriers incur expenses in collecting and handling PFCs even when they refund tickets. FAA chose not to adopt these comments, but to base carrier compensation on PFCs collected to account for widely varying refund rates between air carriers, while preserving PFC revenue for airports.

Finally, the request from United for one of two possible statements from the FAA regarding the existing rule is outside the scope of this rulemaking and FAA will take no action on this request.

Disproportional Cost for International Carriers

Comments: IATA supports FAA's proposed increase in the rate of air carrier compensation. However, IATA claims there is a disproportional cost for international carriers to collect and remit PFCs to airports they do not serve. With the development of airline alliances, IATA asserts that international air carriers often sell tickets and collect PFCs for airports they do not serve. IATA notes that for smaller airports, international carriers may collect only one or two PFCs each month. Therefore, IATA requests that FAA consider adopting quarterly remittance and reporting for international carriers when the total monthly collection for an individual public agency does not exceed $300.

FAA Response: FAA disagrees. IATA's proposed changes to the collection and reporting requirements are beyond the scope of this rulemaking action. Therefore, FAA has not made any changes to the rule in response to IATA's comments.

Disclosure Costs

Comments: ATA, Southwest, and United oppose FAA's proposal to use reduced disclosure costs for Southwest in calculating the rate of compensation.

Disclosure costs are those costs associated with disclosing, in applicable advertising, the existence of PFCs to the general public. The commenters claim that FAA's failure to use the full amount of Southwest's disclosure costs in calculating the increased rate of carrier compensation will result in under-compensation of air carriers. In response to NPRM, Southwest sent more data supporting its disclosure costs (Docket No.: FAA–2003–13918).

FAA Response: FAA agrees. FAA has considered the commenters' arguments and has analyzed Southwest's data. Tables A–1, A–2 and B show FAA's analysis. FAA has determined that Southwest's data conforms to the agreed-upon audit procedures that OIG recommended as a valid means of measuring the incremental disclosure costs associated with PFC collections. Therefore, FAA has included these costs in calculating the new rate of carrier compensation. Including the full amount of Southwest's disclosure costs has the effect of raising the rate of compensation by one cent during the time frame before January 1, 2005. Therefore, the FAA has set the new PFC rate of air carrier compensation at $0.11 for PFCs collected, effective 30 days from the date of publication of this final rule.

BILLING CODE 4910–13–P

Table A-1

ALL AIRLINES	1999 Actual Costs [1]		1999 Pro-Forma [2]		Implementation Costs [3]	
	Total Cost ($)	% Total Bef. Int.	Total Cost ($)	% Total Bef. Int.	Total Cost ($)	% Total Bef. Int.
Credit Card Fees/Bad Debt Expenses	24,311,612	43.7%	33,390,598	52.8%	-	
Audit Fees (External)	423,502	0.8%	296,166	0.5%	85,182	2.5%
Disclosure Costs	6,218,343	11.2%	6,218,343	9.8%	-	
Reservations	9,751,032	17.5%	9,317,814	14.7%	-	
Passenger Services	5,226,254	9.4%	5,092,650	8.1%	-	
Data Entry:						
Internal	43,609	0.1%	29,605	0.0%	-	
Other	-	0.0%	-	0.0%	-	
Revenue Accounting	857,925	1.5%	728,507	1.2%	6,875	0.2%
Accounts Payable	109,905	0.2%	71,390	0.1%	-	
Tax & Legal	77,359	0.1%	75,859	0.1%	-	
Corporate Property Department	323,570	0.6%	282,195	0.4%	-	
Training:						
Reservations	99,154	0.2%	99,158	0.2%	49,675	1.4%
Other	413	0.0%	413	0.0%	-	
Ticket Agents	782,336	1.4%	445,625	0.7%	55,424	1.6%
Internal On-Going IT	552,695	1.0%	488,602	0.8%	-	
CRS On-Going fees	5,823,761	10.5%	5,732,145	9.1%	-	
ATPCO	5,407	0.0%	4,643	0.0%	135	0.0%
ARC + BSP	988,694	1.8%	946,262	1.5%	77,712	2.2%
Internal One-Time IT update	-	0.0%	-	0.0%	3,020,947	87.2%
CRS One-Time update	-	0.0%	-	0.0%	168,870	4.9%
Interest Revenue on Float	(7,070,099)	n/a	(9,969,952)	n/a	-	
TOTAL COSTS	55,595,572	100.0%	63,219,975	100.0%	3,464,820	100.0%
TOTAL COSTS LESS INTEREST	48,525,473	n/a	53,250,024	n/a	3,464,820	n/a
Number of PFCs Remitted	436,659,521		406,526,509		448,929,355	
Number of PFCs Collected	485,238,737		452,173,384		505,223,269	
Percentage of PFCs Refunded	10.0%		10.1%		11.1%	
Cost Less Interest / PFC Remitted	**$0.1111**		**$0.1310**		**$0.0077**	
YOY Change						
Cost Less Interest / PFC Collected	**$0.1000**		**$0.1178**		**$0.0069**	
YOY Change						
PFC Absorption	$30,495,212		$123,040		$0	
Cost Less Interest / PFC Remitted	**$0.0698**		**$0.0003**		**$0.0000**	
Cost Less Interest / PFC Collected	**$0.0628**		**$0.0003**		**$0.0000**	
Airline, Inc. Specific Issue	$0		$0		$0	
Cost Less Interest / PFC Remitted	**$0.0000**		**$0.0000**		**$0.0000**	
Cost Less Interest / PFC Collected	**$0.0000**		**$0.0000**		**$0.0000**	

*All Notes Located After Table A-2

Table A-2

ALL AIRLINES	Full Year Costs 2000 (X Act.+ Y Fore.) [4, 5]		Forecast 2001 [5, 6]		Forecast 2002 [5, 7]	
	Total Cost ($)	% Total Bef. Int.	Total Cost ($)	% Total Bef. Int.	Total Cost ($)	% Total Bef. Int.
Credit Card Fees/Bad Debt Expenses	25,764,355	44.8%	30,439,131	48.7%	40,171,934	54.6%
Audit Fees (External)	346,218	0.6%	254,874	0.4%	258,866	0.4%
Disclosure Costs	6,620,836	11.5%	7,299,357	11.7%	7,653,674	10.4%
Reservations	10,171,552	17.7%	9,976,331	16.0%	10,305,004	14.0%
Passenger Services	4,961,096	8.6%	5,118,586	8.2%	5,333,362	7.3%
Data Entry:						
Internal	27,348	0.0%	14,251	0.0%	11,961	0.0%
Other	-	0.0%	-	0.0%	-	0.0%
Revenue Accounting	797,781	1.4%	677,840	1.1%	728,875	1.0%
Accounts Payable	65,580	0.1%	22,247	0.0%	22,662	0.0%
Tax & Legal	79,397	0.1%	82,375	0.1%	85,226	0.1%
Corporate Property Department	330,789	0.6%	285,300	0.5%	291,418	0.4%
Training:						
Reservations	46,063	0.1%	64,529	0.1%	67,572	0.1%
Other	413	0.0%	424	0.0%	435	0.0%
Ticket Agents	808,604	1.4%	506,472	0.8%	521,076	0.7%
Internal On-Going IT	461,317	0.8%	411,713	0.7%	427,077	0.6%
CRS On-Going fees	6,041,255	10.5%	6,289,935	10.1%	6,622,008	9.0%
ATPCO	5,459	0.0%	4,747	0.0%	4,800	0.0%
ARC + BSP	1,019,882	1.8%	1,005,256	1.6%	1,021,747	1.4%
Internal One-Time IT update	-	0.0%	-	0.0%	-	0.0%
CRS One-Time update	-	0.0%	-	0.0%	-	0.0%
Interest Revenue on Float	(8,084,805)	n/a	(8,994,969)	n/a	(11,842,645)	n/a
TOTAL COSTS	57,547,945	100.0%	62,453,367	100%	73,527,696	100%
TOTAL COSTS LESS INTEREST	49,463,140	n/a	53,458,398	n/a	61,685,052	n/a
Number of PFCs Remitted	444,824,234		461,578,154		478,388,038	
Number of PFCs Collected	501,515,992		520,524,261		539,660,248	
Percentage of PFCs Refunded	11.3%		11.3%		11.4%	
Cost Less Interest / PFC Remitted	**$0.1112**		**$0.1158**		**$0.1289**	
YOY Change			4.2%		11.3%	
Cost Less Interest / PFC Collected	**$0.0986**		**$0.1027**		**$0.1143**	
YOY Change			4.1%		11.3%	
PFC Absorption	$11,706,485		$11,967,101		$12,233,538	
Cost Less Interest / PFC Remitted	**$0.0263**		**$0.0259**		**$0.0256**	
Cost Less Interest / PFC Collected	**$0.0233**		**$0.0230**		**$0.0227**	
Airline, Inc. Specific Issue	$0		$0		$0	
Cost Less Interest / PFC Remitted	**$0.0000**		**$0.0000**		**$0.0000**	
Cost Less Interest / PFC Collected	**$0.0000**		**$0.0000**		**$0.0000**	
ASM growth rate	0.0%		10.0%		5.0%	
"CPI - Urban" from WEFA [8]	3.3%		2.4%		2.4%	

Notes for Tables A–1 and A–2

[1] Actual costs incurred. Agreed upon procedures have been applied by the independent account to actual 1999 costs.

[2] Assumes the same volume as 1999, but with 100% of PFCs Collected at $4.50 per PFC—this only impacts Credit Card Fees and Interest revenue. Does not include Continental.

[3] For any costs associated with the implementation of the new maximum $4.50 PFC rate. This column is not year specific.

[4] 2000 estimate total based on 1999 actual performance. Does not include TWA results.

[5] Does not include any one time IT Costs (Implementation Costs).

[6] Assumes 3 months with 100% of PFC's Collected at $3. Assumes 9 months with 50% at $3 and 50% at $4.50.

[7] Assumes 12 months with 100% of PFCs at $4.50.

[8] WEFA US Economic Outlook 2000–05—US Cycle Monitor, September 2000, page 201. All Items—Urban Wage Earners.

[9] Labor contracts require union members to receive annual raises which are an average of United, American, Delta and Northwest's union contracts plus an additional 1%.

Table B

Table 6: Proposed Compensation Fee Phase-In				
	Year 2002 (Assumes 50% PFC's at $3 and 50% at $4.50)	Year 2003 (Assumes 40% PFC's at $3 and 60% at $4.50)	Year 2004 (Assumes 30% PFC's at $3 and 70% at $4.50)	Year 2005 (Assumes 20% PFC's at $3 and 80% at $4.50)
Compensation Per Collected PFC				
Cost Per $3 PFC Collected (Actual)	$0.1000	$0.1000	$0.1000	$0.1000
Cost Per $4.50 PFC Collected (Pro-Forma)	$0.1177	$0.1177	$0.1177	$0.1177
Weighted Cost Per PFC Collected (Actual)	$0.1089	$0.1106	$0.1124	$0.1142
Proposed Fee Per PFC Collected	**$0.1100**	**$0.1100**	**$0.1100**	**$0.1100**
Over/Under Compensation at Proposed Fee	$0.0012	($0.0006)	($0.0024)	($0.0042)

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Rate of Adoption of the $4.50 PFC Level

Comment: American, ATA, and Southwest urged FAA to reconsider its estimated mix of airports adopting the $4.50 PFC level. American contends more airports have adopted the $4.50 PFC than FAA estimated in its proposal. American, therefore, asserts that air carriers should receive a higher rate of compensation (by one cent) for PFC collections. Southwest agreed with American's claim.

FAA Response: FAA disagrees. FAA found that by January 1, 2003, 53 percent of airports collecting PFCs had adopted the $4.50 PFC level. This adoption rate is slightly higher than FAA's projected rate in the NPRM that 50 percent of all PFCs collected in 2002 would be at $4.50. However, the 53 percent adoption rate is a year-end rate and does not represent the average adoption rate for 2002. Based on this, FAA believes the 50 percent projected adoption rate is consistent with the actual average adoption rate for 2002.

Retroactivity of Increased Compensation Level

Comments: Many of the commenters urge FAA to make the proposed change to the air carrier compensation rule retroactive to January 1, 2002. The commenters claim the data in FAA's proposal clearly indicates that carriers have been under-compensated since 1999. The commenters state that air carriers should not have to ''absorb'' the cost of handling PFCs in the years they were under-compensated.

Also, ATA requests that FAA establish a ''start up'' rate of compensation that would give air carriers credits against landing fees and other airport charges. ATA request that FAA at least provide a temporary adjustment to allow air carriers to ''catch up'' on the shortfall. Specifically, Continental recommends that FAA adopt a $0.12 level for a period of time to allow carriers to recover money lost during the time that air carriers were under-compensated. Also, Continental requests that FAA make the increased rate of compensation effective the date that FAA issued the proposed rulemaking.

FAA Response: FAA disagrees. Nothing in the PFC statute authorizes retroactive compensation. Therefore, FAA does not have the authority to retroactively authorize compensation for PFCs. Accordingly, FAA has not adjusted the rate of compensation to provide a retroactive increase.

Periodic Review of Air Carrier Compensation

Comments: ATA recommends that FAA consider setting up a mechanism for formal review of air carrier compensation on a periodic basis, such as every two years. ATA noted that such a review process would be less costly and burdensome on air carriers, airports, and FAA than engaging the rulemaking process.

FAA Response: FAA agrees with the commenter and will establish a process to periodically review air carrier compensation for handing PFCs.

Cost Categories

Comments: In a joint comment, ACI–NA and AAAE note that OIG suggested that FAA limit cost data to air carrier incremental costs associated directly with PFC collection, handling, and remittance. The commenters assert they do not believe that ATA and the air carriers have made sufficient argument for increasing carrier compensation on PFCs collected. Specifically, the commenters state that much of the data that air carriers submitted to FAA for analysis does not meet OIG's ''intent and legitimacy test.''

The commenters agree with FAA's proposal to exclude PFC absorption as a legitimate cost. Also, the commenters agree with FAA's proposal to include credit card fees for remitted PFCs. However, the commenters disagree with the inclusion of credit card fees for refunded tickets. In addition, the commenters oppose three of the cost categories FAA used in calculating the proposed rate of compensation. Specifically, the commenters oppose accepting reservation services, disclosure costs, and passenger service expenses as categories associated directly with PFC collection and remittance. The commenters contend these categories, although included in the agreed-upon procedures, provide flexibility for interpretation that allows arbitrariness, miscalculation, and error. The commenters claim these costs are not associated directly with PFC collection and remittance. The commenters note that if FAA removes these costs from the calculations, the actual rate of compensation decreases by $0.04. The commenters also contend that PFC conversion from a remitted PFC to a collected PFC would cause carriers to incur high changeover costs. Finally, some commenters object to FAA basing the compensation rate on

average costs. They assert that such action rewards high cost carriers for their inefficiency in processing PFCs.

FAA Response: FAA disagrees. FAA has found that air carriers do incur credit card costs on refunded transactions and has found that carriers incur a service fee with such transactions. FAA also confirmed these refund costs were included in the carrier cost data. Accordingly, these costs are retained for the purposes of determining compensation.

FAA also disagrees with the commenters with regard to the potential for high changeover costs for a new charge level. FAA notes that PFC revenue remitted by the air carriers is already net of compensation. Therefore, the carriers would only have to restructure their accounting systems for the change in rate and basis. No carrier filing comments to FAA's proposal objected to costs associated with the changeover. Some air carriers have always used collected PFCs, such as United, and their accounting systems operate that way today.

FAA has reexamined OIG's recommended procedures and the air carrier cost categories and data. FAA has determined the categories used to determine the rate of compensation are those that most accurately reflect the costs to the carriers for collecting, handling, and remitting PFC revenue to collecting airports. FAA agrees these categories may not capture purely ''incremental'' costs. However, as the commenters noted, it is difficult to fully isolate these incremental costs. FAA is not convinced that isolating these costs would add significant value and added accuracy in calculating the costs associated with collecting and handling PFCs. FAA notes, however, these considerations do not diminish the validity of using these categories to arrive at a PFC rate of compensation.

Finally, FAA notes the governing statute mandates that FAA establish a uniform amount reflecting the ''average reasonable and necessary expenses'' of collecting and handling the PFC. Therefore, in order to determine the ''average'' of any cost category which meets OIG's ''intent and legitimacy test,'' FAA must consider the costs of both high cost carriers and low cost carriers.

Revisions to PFC Audit Requirements

Comments: In a joint comment, ACI–NA and AAAE request that FAA revise its audit requirements to include financial information gathered from the two air carrier ticket clearing houses.

FAA Response: The request to revise audit requirements is outside the scope of this rulemaking and FAA will take no action on this request.

Interest Rate on Float

Comments: In a joint comment, ACI–NA and AAAE agree with FAA's decision to include a ''float'' interest in calculating carrier compensation. However, the commenters recommend using a ten-year average interest rate in place of the shorter-term rate in FAA's proposal to mitigate extraneous benefits to the carriers by using a rate at a historically low level.

FAA Response: FAA disagrees with the commenter's recommendation. The data that each air carrier provided to FAA, in accordance with the agreed-upon procedures, reflects the carrier's audited interest earnings during the base year. FAA's approach is to calculate the compensation rate using actual carrier earned interest. OIG concurs with this approach. Using this calculation for the base year as an offset to costs is the most consistent methodology. Moreover, the PFC statute specified that carrier compensation be set after offsetting the interest earned by the carriers, not after applying an interest index.

Bankruptcy Protection

Comments: In a joint comment, ACI–NA and AAAE contend that if FAA increases the rate of carrier compensation for PFCs, airports will need improved protection in carrier bankruptcy proceedings. Specifically, the commenters suggest that FAA prohibit air carriers from commingling PFCs with other air carrier funds. The commenters want to ensure that air carriers will have easy access to PFC funds even when they have entered bankruptcy. Also, PANYNJ requests that FAA include language that clarifies the status of PFC funds when carriers enter bankruptcy.

FAA Response: The issues the commenters raise are outside the scope of this rulemaking. In addition, FAA notes that some of these proposals may require changes to bankruptcy statutes or regulations that are beyond the authority of the FAA.

Summary and Conclusion

FAA has considered the commenters' arguments and has determined that a compensation rate of $0.11 per PFC collected reflects the average necessary and reasonable expenses incurred by the air carriers in collecting and handling the PFC for airports. Accordingly, the compensation rate of $0.11 per PFC collected will be effective 30 days after the publication of this rule.

Paperwork Reduction Act

Information collection requirements in the amendment to part 158 previously have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0557. Nine air carriers voluntarily submitted most of the data FAA used in this rulemaking action.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. FAA determined there are no ICAO Standards and Recommended Practices that correspond to this compensation adjustment.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined this rule (1) has benefits that justify its costs, is a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 and is ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant economic

impact on a substantial number of small entities; (3) will not reduce barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

Economic Assessment

Analysis of Costs

This change in compensation to air carriers is limited to what is allowed by statute. Once FAA has determined air carriers' average, necessary and reasonable expenses incurred in collecting and handling PFCs, the compensation rate is not subject to FAA discretion.

Costs to Airports

For airports, the principal effect of the higher rate of compensation is the marginal erosion of the airports' PFC revenue stream. FAA is changing the basis of compensation from a PFC remitted basis to a PFC collected basis. A rate of compensation of $0.11 for each PFC collected equals about $0.12 for each PFC remitted. Average air carrier ticket refund rates, which account for the difference between PFCs collected and remitted, are about 9 percent.

The increase in compensation will lead to redistribution of $21 million each year in PFC collections to air carriers from airports based on 1999 enplanements. The sum amounts to a loss of slightly more than one percent of the projected annual PFC stream. However, the increase in compensation will not erode approved collection authority for airports. Rather, the higher compensation will result in a small extension of the time period required to collect an authorized amount of PFC revenue. For example, an authorized PFC collection amount, such as $1 million, would currently take a public agency one year to collect at a $4.50 PFC level. This assumes the air carrier retains $0.08 for each remitted PFC. Under the new compensation rate of $0.11, it would take one year plus 3.3 days to collect $1 million at a $4.50 level.

It is possible that some airports may be impacted negatively by the slight increase in the time it would take, because of the increase in the compensation level, to raise authorized PFC amounts for projects. However, most airports with PFC-funded projects already in place originally planned to finance these projects based on a $3 PFC level. Now, under AIR–21, they can implement a $4 or $4.50 PFC level to supplement funding. New projects based on the $4.50 PFC level can be planned around the higher rate of compensation, if necessary.

The group of airports that will be impacted the most by the increase would be those airports that do not increase their PFC to a $4 or $4.50 PFC level. FAA assumes that 80 percent of all airports will move to a $4.50 PFC by 2005. This assumption reflects the almost uniform adoption of the $3 PFC level by airports before AIR–21, even though they had the option of either a $1, $2, or $3 PFC level. To date, some airports have decided to remain at the $3 level because of market or other local conditions. Similarly, some large or medium hub airports may not be able to develop a sufficient volume of projects to qualify at the $4.50 level. In the case of any airport remaining at a $3 level, the airport's annual PFC revenue erosion would increase to 1.3 percent. For example, it would take a public agency one year to collect an authorized amount, such as $1 million, at a $3.00 PFC level. This assumes the air carrier retains $0.08 for each remitted PFC. Under the new rate of compensation, it would take the public agency one year plus 5.1 days to collect $1 million at a $3.00 level. This higher percentage loss of revenue for the limited number of airports that remain at the $3 level will not severely affect their infrastructure improvement plans.

Costs to Air Carriers

Air carriers will incur only slight costs in adjusting their accounting and ticketing programs to accommodate the increased compensation amount of $0.11 for each PFC collected. Before June 28, 1994, air carrier accounting and ticketing programs allowed a compensation rate of $0.12 for each remitted PFC. Therefore, air carriers should be able to adjust such programs to accommodate the $0.11 rate of compensation. The primary cost of the amendment is associated with the change in the compensation basis from remitted PFCs to collected PFCs. This new basis of compensation may require some new programming. However, FAA believes the reprogramming costs, if any, to allow this change will be minor.

Impact on Air Passengers

The adjustment to PFC collection compensation will not affect the PFC amount or the ticket prices paid by airline passengers for any given flight. The amendment will only affect amounts of the PFC retained by the air carrier. Instead of retaining $.08 for each PFC remitted to a public agency, air carriers will retain $0.11 for each PFC they collect. The only potential impact on air passengers would arise from the effects of the slightly reduced annual PFC remittances to airports. Since it would take an airport slightly longer to collect a specific amount of PFC revenues to fund a project, the period of time during which a PFC would be collected would be longer. In some cases, the longer collection period could slightly delay PFC-funded projects intended to benefit air passengers. The effect of such delays, however, would be minor.

Analysis of Compensation Effects

Compensating air carriers based on PFCs collected rather than PFC remitted is subject to FAA discretion. In the case of refunded tickets, FAA reasoned the additional handling cost of collecting and refunding a PFC to a passenger would add to the overall expense of collecting and handling PFCs. Such costs would be embedded in the overall collection and handling cost data provided by the air carriers. If all air carriers had identical refund rates, use of an average compensation amount for each PFC collected or for each PFC remitted would be equally fair to individual carriers. For example, assume that total industry collection and handling costs were $12 million for 120 million PFCs collected. If 20 million PFCs were refunded and 100 million remitted to the airports, then a compensation rate of $0.10 for each PFC collected or $0.12 for each PFC remitted PFC would generate the same total compensation to the industry. Moreover, if all air carriers had equivalent refund rates, all airports would be reimbursed equally for these refund expenses. However, refund rates among individual air carriers in 1999 varied from 5 percent of total collected PFCs refunded to as high as 20 percent. By selecting compensation method based on PFCs collected, individual carriers would be reimbursed in a manner that more closely corresponds to actual handling levels. This approach, while not affecting the overall amount of compensation received, provides a closer match between each individual carrier's actual handling costs and its PFC handling compensation.

Summary of Costs and Compensation Effects

FAA concludes this final rule is a cost-effective means of meeting the statutory requirement. It provides a uniform rate of compensation that fully covers the reasonable and necessary costs of air carriers for collecting and handling PFCs for airports. FAA estimates that a compensation rate of $0.11 for each PFC collected will allow

air carriers to recover fully their collection and handling expenses over a 10-year period.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

FAA has determined the rule will have only a negligible impact on small commercial service airports. All costs are recoverable fully through the PFC by making small adjustments to the period of PFC collection. Any adverse impact on small air carriers that collect and handle PFCs will be minor and the result of statutory law. Also, FAA expects the final rule to result in higher compensation for air carriers even after incurring minor up-front administrative costs to convert ticketing systems to accommodate the new rate of compensation.

FAA conducted the required review of this final rule and determined that it would not have a significant economic impact. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies this rule will not have a significant impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards

In accordance with the above statute, FAA has assessed the potential affect of this final rule and has determined that, to the extent it imposes any costs affecting international entities, it will impose the same costs on domestic entities for comparable services and thus has a neutral trade impact. The additional compensation to air carriers for handling PFCs will not affect the cost of international travel. The existing rule imposes the same requirements to collect the PFC on tickets issued in the United States on domestic air carriers and on foreign air carriers. All international air carriers will receive higher compensation levels to reimburse their reasonable costs of collecting and handling PFCs.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This final rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. We have determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 158

Air carriers, Airports, Passenger facility charge, Public agencies, Collection compensation.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends part 158 of Title 14 of the Code of Federal Regulations as follows:

PART 158—PASSENGER FACILITY CHARGES (PFC'S)

■ 1. The authority citation for part 158 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40116–40117, 47106, 47111, 47114–47116, 47524, 47526.

■ 2. Amend § 158.53 by revising paragraph (a) to read as follows:

§ 158.53 Collection compensation.

As compensation for collecting, handling, and remitting the PFC revenue, the collecting air carrier is entitled to:

(a) Retain $0.11 of each PFC collected;

* * * * *

Issued in Washington, DC, March 11, 2004.

Marion C. Blakey,

Administrator.

[FR Doc. 04–6096 Filed 3–17–04; 8:45 am]

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Federal Register

Thursday,
March 18, 2004

Part VI

Department of Housing and Urban Development

24 CFR Part 983
Project-Based Voucher Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 983

[Docket No. FR–4636–P–01]

RIN 2577–AC25

Project-Based Voucher Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: HUD proposes comprehensive regulations for the new project-based voucher program. In this program, HUD pays rental assistance for eligible families who live in specific housing developments or units. A public housing agency (PHA) that runs the tenant-based housing choice voucher program may ''project-base'' up to 20 percent of voucher units funded by HUD. The project-based voucher program replaces the project-based certificate program and these regulations would replace the current regulations for the project-based certificate program.

DATES: *Comments Due Date:* May 17, 2004.

ADDRESSES: Interested persons are invited to submit written comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Facsimile (FAX) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone (202) 708–0477 (this is not a toll-free number). Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The new project-based voucher program was authorized by statute in 1998, as part of the statutory merger of the certificate and voucher tenant-based assistance programs. (See Section 545 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, approved October 21, 1998, amending 42 U.S.C. 1437f(o)).) The 1998 law provided PHAs with the option to use a portion of its available tenant-based voucher funds for project-based rental assistance. The 1998 law replaced a similar authority for project-based rental assistance in the former certificate program. In 2000, the Congress substantially revised the requirements of the project-based voucher program. (Section 8(o)(13) of the United States Housing Act of 1937, 42 U.S.C. 1473f(o)(13), as amended by section 232 of the Fiscal Year 2001 Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act (Pub. L. 106–377, approved October 27, 2000).)

Significant features of the project-based voucher program as authorized in 1998, and amended in 2000 include:

- A PHA may project-base up to 20 percent of the PHA's voucher funding.
- A PHA may provide project-based assistance for existing housing that does not need rehabilitation, as well as for newly constructed or rehabilitated housing.
- Project-based assistance must be consistent with the ''PHA Plan.''
- Project-basing must be consistent with the statutory goals of ''deconcentrating poverty and expanding economic opportunities.''
- After one year of assistance, the family may move from a project-based voucher unit to the PHA's tenant-based voucher program or another comparable program, when a slot is available.
- Except for units designated for the elderly, disabled, or families receiving supportive services under a family self-sufficiency (FSS) program, no more than 25 percent of units in a building may have project-based voucher assistance.
- A PHA may commit to pay project-based assistance for a term of up to 10 years. However, the PHA's contractual commitment is subject to availability of appropriated funds.
- At the end of the contract term, the PHA may extend the housing assistance payment (HAP) contract with an owner for an additional term of up to one year, if appropriate, to continue providing affordable housing for low-income families. One-year extensions are subject to availability of appropriated funds.
- Generally, project-based voucher rents (rent to owner plus the allowance for tenant-paid utilities) must not exceed the lowest of the payment standard amount (minus any utility allowance), the reasonable rent, or the rent requested by the owner. This limit applies both to the initial rent and rent adjustments over the term of the HAP contract.
- There are special provisions for establishing the project-based voucher rent for a unit in a tax credit building located outside a ''qualified census tract.''
- Admission to project-based units is subject to the overall voucher ''income-targeting'' requirement. At least 75 percent of the families admitted to the PHA tenant-based and project-based voucher programs each year must be ''extremely low-income'' families with annual incomes below 30 percent of median income for the area.
- All units must be inspected for housing quality standards (HQS) compliance before the PHA enters a HAP contract with an owner. After the initial inspection, the PHA is not required to re-inspect each unit annually. Instead, the PHA may inspect a representative sample of units at the annual inspection.
- If a family moves out, the PHA may continue payments to the owner for up to 60 days. The PHA has discretion whether to provide such vacancy payments.

On January 16, 2001 (66 FR 3605), HUD published a **Federal Register** notice that provided guidance on implementation of the new project-based program, as authorized in 1998 and amended in 2000. The HUD notice described the law and provided guidance on how to implement the law and existing program regulations before HUD issues new program regulations. This notice remains applicable until HUD issues a final rule following this proposed rule.

Requirements of this proposed rule would be applicable to all project-based voucher units, except that this rule would not affect the contractual rights of owners under project-based voucher agreements and HAP contracts entered into by a PHA and owner (1) prior to the effective date of the final rule, and (2) in accordance with the law and HUD requirements and on the contractual forms prescribed by HUD. This rulemaking will not apply to project-based certificate units. Project-based certificate units will continue to be governed by the regulations of 24 CFR part 983, codified as of April 1, 2003, after this rule becomes effective.

II. This Proposed Rule

An overview of the regulations that this rule proposed to govern the project-based voucher program follows.

A. A Project-Based Voucher Program Administered by PHAs Uses Tenant-Based Voucher Funding. There Is No Separate Allocation of Project-Based Funds. It is the PHA's Option Whether To Implement a Project-Based Voucher Program

The project-based voucher program is administered by a PHA that already administers the tenant-based voucher program under an annual contributions contract (ACC) with HUD. There is no additional funding for project-based vouchers.

If a PHA decides to operate a project-based voucher program, the program is funded with a portion of the appropriated funding (budget authority) available under the PHA's voucher ACC. This pool of funding is used to pay rental assistance for both tenant-based and project-based voucher units and to pay PHA administrative fees for administration of tenant-based and project-based voucher assistance.

A PHA has discretion whether to implement a project-based voucher program. HUD approval is not required.

B. Maximum Number of Project-Based Voucher Units

Prior to 1998, the law capped the number of project-based units at the number supported by 15 percent of the total funding available to the PHA under the PHA's ACC for tenant-based assistance. Under this rule, the PHA would be able to project-base up to 20 percent of the PHA's ''baseline'' number of units. This baseline number is established pursuant to § 982.102 and is the number of voucher units used by HUD to determine the amount needed for renewal of the ACC. All outstanding commitments for project-based assistance—project-based certificate and project-based voucher units under agreement or HAP contract plus project-based units selected by the PHA but not yet under agreement or HAP contract—count against the 20 percent maximum.

C. Project-Based Vouchers May Be Used With Existing Housing.

In the past (under the project-based certificate program), a PHA could only project-base newly constructed or rehabilitated units—using a portion of its available tenant-based funding. In the project-based voucher program, a PHA may also use tenant-based funding to attach assistance to existing units not needing rehabilitation.

To qualify as ''existing housing'' as defined in the rule, the units must already exist and substantially comply with the housing quality standards (HQS) on the proposal selection date. This is the date the PHA gives written notice of proposal selection to the owner whose proposal is selected. The units must fully comply with the HQS before execution of the HAP contract.

D. Project-Based Vouchers May Be Used With Newly Constructed and Rehabilitated Housing

Under this proposed rule, the requirements for ''newly constructed or rehabilitated housing'' would apply to any housing that does not qualify as ''existing housing.'' These requirements would apply to any housing that does not substantially comply with the HQS on the proposal selection date and that therefore requires a process of development to comply with the HQS.

''Development'' is defined as the construction or rehabilitation of project-based voucher housing after the proposal selection date. Construction includes any excavation or site preparation for the housing.

In the construction or rehabilitation of the housing, the owner must comply with federal development requirements such as compliance with labor standards (including Davis-Bacon), environmental, and equal opportunity (*e.g.,* Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, equal employment, and program accessibility) requirements. Owners must comply with the requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations at 24 CFR 8.22, 8.23(a), or 8.23(b), as applicable, and the design and construction requirements of the Fair Housing Act Amendments of 1988, 42 U.S.C. 3604(f)(3)(C), and the regulations at 24 CFR 100.205, as appropriate.

An agreement is executed for units to be constructed or rehabilitated before the beginning of construction or rehabilitation. In the agreement, the owner agrees to develop the contract units to comply with the HQS. The owner also agrees to comply with federal development requirements, such as compliance with federal Davis-Bacon prevailing wage requirements (40 U.S.C. 3141 *et seq.*) relative to the development of nine or more project-based voucher units. The PHA monitors compliance with labor standards (see HUD Handbook 1344.1, Federal Labor Standards Compliance in Housing and Community Development Programs).

The PHA agrees that upon timely completion of such development in accordance with the terms of the agreement the PHA will enter into a HAP contract with the owner for the contract units.

E. PHAs May Select Only Sites Meeting Certain Requirements, Including Deconcentration Goals

All site selection must be consistent with the project-based voucher statutory goals of deconcentrating poverty and expanding housing and economic opportunities.

For the most part, there is no need to distinguish between ''newly constructed'' and ''rehabilitated'' housing since the project-based voucher program requirements are identical. As in the past, however, the new rule would substantially continue the existing distinction between the civil rights site selection standards for ''newly constructed'' and ''rehabilitated'' housing.

At this time, HUD does not propose a substantive change in the existing site selection standards for newly constructed or rehabilitated housing. The site and neighborhood standards specified in this proposed rule are HUD's ''institutional standards'' for evaluating and considering the effect of site selection, in the light of HUD's responsibility to affirmatively promote fair housing in its programs.

F. PHAs Must Select Units for the Project-Based Voucher Program in Accordance With the PHA's Local Unit Selection Policies and Competitive Procedures

Generally, HUD will require PHAs to select project-based voucher proposals based on some kind of public competition. In cases where a federal, state, or local housing assistance, community development, or supportive services program that requires a competitive selection of proposals has already competitively selected proposals, a second competition for project-based vouchers is not required. In all other cases, however, PHAs must select proposals based on public competition. The notice of competition must be published by means that actually operate to provide broad public notice, including publication in a newspaper of general circulation and other means. The selection of winning proposals shall also be made public. The PHA's unit selection policies must be specified in the PHA's administrative plan, and the PHA must select units in accordance with those policies.

G. Generally, No More Than 25 Percent of the Units in Each Multifamily Building May Be Assisted

Generally, no more than 25 percent of the dwelling units in each building may have project-based voucher or any other federal project-based housing assistance.

The following types of housing units are exempt from the 25 percent per building cap: (1) Project-based dwelling units in single family (one-to four-unit) properties; (2) units in a multifamily building (5 or more units) set aside for elderly or disabled families; and (3) units in a multifamily building set aside for families participating in a voucher, project-based certificate, or public housing FSS program who are in compliance with or have completed their FSS contract of participation. In addition, PHAs may establish additional local requirements to promote income mixing.

The restrictions concerning the number of subsidized units in each building apply to all types of housing selected for the project-based voucher program—existing, newly constructed, and rehabilitated housing.

H. Family Option To Move From Project-Based Voucher Unit After First Year and Receive Tenant-Based Assistance Elsewhere

After living in the project-based unit one year, the tenant may move out and receive tenant-based voucher subsidy or other comparable tenant-based rental assistance. ''Comparable rental assistance'' is defined as a subsidy or other means to enable a family to obtain decent housing in the PHA jurisdiction renting at a gross rent that is not more than forty percent of the family's monthly adjusted income.

The tenant must give the owner advance written notice of intent to vacate the project-based voucher unit in accordance with the lease. If a tenant-based voucher (or comparable assistance) is not immediately available when the project-based voucher unit lease is terminated, the PHA must give the family priority to receive the next available voucher or comparable assistance.

Vouchers from funding allocations targeted by HUD for special purposes (*e.g.*, family unification, mainstream disabled) are not available for this purpose.

I. Term of HAP Contract; Ten Year Maximum Initial HAP Contract Term

In all cases, units must comply with the HQS before the HAP Contract is executed. For newly constructed or rehabilitated units, the HAP Contract is executed after the construction work ends, and the PHA accepts that the units have been completed in accordance with the agreement, including full compliance with the HQS.

The HAP Contract term for each unit is between one year and ten years, as determined by the PHA. However, continuation to the full term is subject to the future availability of sufficient appropriated funds under the PHA's consolidated ACC with HUD.

At the end of the term, the PHA may extend the initial HAP Contract term for additional terms of up to one year if the PHA determines that such extensions are appropriate to continue providing affordable housing for low-income families. Such extensions are subject to the continuing availability of appropriations.

J. Every Unit Must Comply With the Housing Quality Standards (HQS) Before the HAP Contract Is Executed. Annual PHA HQS Inspections May Be Limited to a Representative Sample of Units Under HAP Contract

Project-based voucher units must comply with the HQS before the HAP contract is executed and during the term of the HAP contract. The PHA may establish additional quality, architecture, and design requirements for newly constructed or rehabilitated housing.

Before and during the term of assistance, project-based voucher units are inspected for compliance with the HQS. Every project-based voucher contract unit must be inspected and pass the HQS inspection before housing assistance is provided under the HAP contract.

However, a PHA is not required to inspect each project-based voucher unit in a project annually. Instead, at least annually during the term of the HAP contract, the PHA must initially inspect a random sample, consisting of at least 20 percent of the contract units in each building, to determine if the contract units and the premises are maintained in accordance with the HQS. If more than 20 percent of the initially inspected contract units in a building fail the initial annual inspection, the PHA must inspect 100 percent of the contract units in the building. In addition, the PHA must inspect every turnover unit before occupancy by a replacement assisted family.

K. Initial Rent to Owner; Special Rent Rules for Tax Credit Units Not Located in a Qualified Census Tract; Rent Adjustments

Generally, project-based voucher rents (rent to owner plus the allowance for tenant-paid utilities) must not exceed the lowest of the payment standard amount, the reasonable rent, or the rent requested by the owner for the PHA's tenant-based voucher program. This limit applies both to the initial rent and rent adjustments over the term of the HAP contract.

There are special provisions for establishing the project-based voucher rent for a unit in a tax credit building which is located outside a qualified census tract with tax credit rents exceeding the PHA's payment standard, where there are comparable tax credit units of the same unit bedroom size as the contract unit, and the comparable tax credit units do not have any form of rental assistance other than the tax credit. These provisions are found at § 983.301(c) of this proposed rule. A qualified census tract is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of area median gross income or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD (see proposed 24 CFR 983.301(c)(4)). The provisions for special adjustments of contract rent pursuant to 42 U.S.C. 1437f(b)(2)(B) do not apply to the project-based voucher program.

L. The Family Share of Rent Is Calculated Based on the ''Total Tenant Payment;'' Housing Assistance Payment Amount

''Total tenant payment'' and ''tenant rent'' are calculated in accordance with the regulations in 24 CFR part 5. Families pay as the total tenant payment the higher of 30 percent of adjusted monthly income, 10 percent of annual income, any welfare rent, or the PHA's minimum rent. The housing assistance payment is the difference between the rent to the owner and the tenant rent (total tenant payment minus any utility allowance).

M. Income Targeting Requirements for Tenant-Based and Project-Based Vouchers

Admission to the project-based voucher program is subject to the same statutory income targeting requirement as the tenant-based program (42 U.S.C. 1437n(b)), instead of the individual project income targeting requirement that applies to other Section 8 project-based assistance (42 U.S.C. 1437n(c)(3)). During the PHA fiscal year, 75 percent of the admissions to the voucher program (both tenant-based and project-based units) must be ''extremely low-income families''—defined as families with annual incomes not exceeding 30 percent of median income for the area, as determined by HUD.

N. Family Selection From PHA Waiting List

The PHA refers waiting list applicants or current participants to the owner for

selection. The owner screens and selects tenants from families referred by the PHA.

The PHA may elect to establish a separate waiting list for project-based voucher assistance, or to use a single common list for admission to the PHA's tenant-based and project-based voucher programs. If a PHA chooses to establish a separate waiting list for project-based assistance, the PHA must give all applicants currently on its waiting list for tenant-based assistance the opportunity to also have their names placed on the waiting list for project-based assistance in accordance with the PHA's established selection policies. The PHA may use separate waiting lists for PBV units in individual projects or buildings (or for sets of such units) or may use a single waiting list for the PHA's whole PBV program. In either case, the waiting list may establish criteria or preferences for occupancy of particular units.

The PHA may place on the PHA's waiting list applicants referred by owners in accordance with the PHA's local waiting list policies and admission preferences.

O. PHA Option To Provide Vacancy Payment to Owner

A PHA may opt to include a provision in the HAP contract to make vacancy payments to the owner after an assisted family leaves the project-based voucher unit. A vacancy payment is only permitted if: (1) The owner gives prompt notice of the vacancy to the PHA; (2) the vacancy is not the owner's fault; and (3) the owner takes all reasonable actions to minimize the likelihood and length of the vacancy period.

The maximum vacancy payment amount is 60 days rent to owner.

P. PHA-Owned Units

A PHA-owned unit may only be assisted under the PBV program if the HUD field office or an independent entity approved by HUD reviews the selection process and determines that the PHA-owned units were appropriately selected based on the selection procedures specified in the PHA administrative plan.

If PHA-owned housing is selected for the project-based voucher program, an independent entity approved by HUD will conduct HQS inspections. The independent entity will give copies of the inspection report to the PHA and the HUD field office. In addition, an independent entity approved by HUD will determine the initial and adjusted rent to owner.

By law, public housing units may not be assisted in the project-based voucher program.

Q. PHA Option To Amend HAP Contract To Add or Substitute Contract Units

At the discretion of the PHA and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same building for a previously covered contract unit. Prior to such substitution, the PHA must inspect the proposed substitute unit and must determine the reasonable rent for such unit.

In addition, at the discretion of the PHA, the HAP contract may be amended during the three-year period immediately following the execution date of the HAP contract to add additional PBV contract units in a building as long as the total number of project-based voucher and other assisted units stays at or below 25 percent of the total number of units, with or without assistance, in the building. Additional PBV contract units are subject to all PBV requirements (*e.g.*, compliance with Davis-Bacon wage rates during construction and compliance with applicable environmental review requirements), except that a new PBV proposal competition is not required. The anniversary and expiration dates of the HAP contract for the additional units must be the same as the anniversary and expiration dates of the HAP contract term for the PBV units originally placed under HAP contract.

R. Termination of tenancy

The regulations in 24 CFR part 247 (concerning evictions from certain subsidized and HUD-owned projects) do not apply to owner termination of tenancy and eviction of a family receiving PBV assistance.

III. Specific Issues for Comment

HUD seeks comments on all of the PBV program policies contained in this proposed rule, and specifically seeks comments on the following two issues:

(a) *Competitive selection of owner proposals.* HUD acknowledges that it is desirable to permit PHA flexibility to devise local selection policy strategies and invites recommendations on how best to regulate PHA selection of PBV units. At the same time, HUD recognizes that it is in the public interest to avoid any hint of the ''influence peddling'' scandals experienced under the Section 8 moderate rehabilitation program. This proposed rule would require public advertisement for and competitive selection of owner proposals unless the units previously were competitively awarded assistance under a federal, state, or local government housing assistance, community development, or supportive services program. This policy will permit PHAs to select HOME, HOPE VI, tax credit, and similar units for the PBV program without conducting a second PBV competition. HUD solicits comment on whether the owner selection policies proposed in § 983.51 would be appropriate and would permit PHA flexibility to select desirable units, target desirable neighborhoods, and target key ''turning point'' buildings in revitalizing areas while avoiding any hint of owner favoritism or corrupt funding distribution practices.

(b) *Minimizing displacement.* It has been longstanding HUD policy for both the project-based certificate and moderate rehabilitation programs to minimize displacement of current income-eligible tenants in buildings to be rehabilitated. If a unit in a building selected for one of these programs were occupied by an eligible low-income family, the family could remain in the unit and receive housing assistance. While preventing displacement of families and facilitating housing rehabilitation efforts, this policy results in eligible families in occupied units receiving a preference over families on the PHA's waiting list (at least in instances where a PHA does not already provide a waiting list selection preference for families about to be displaced). This rule applies the policy of minimizing displacement to existing housing, a category of housing that previously was not eligible to receive project-based vouchers. HUD requests comments on whether the policy described in § 983.251(b) is appropriate public policy, or whether PHAs should be prohibited from selecting occupied units for the project-based voucher program.

IV. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Rules Docket Clerk, Room

10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410–0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–605) (RFA), has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The proposed rule is exclusively concerned with PHAs that administer tenant-based housing assistance under section 8 of the United States Housing Act of 1937. Specifically, the proposed rule would give PHAs the option of project-basing up to 20 percent of their annual budget authority under the tenant-based program. Under the definition of ''small governmental jurisdiction'' in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few PHAs that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial.

Notwithstanding HUD's determination that this rule does not have a significant economic impact on a substantial number of small entities, HUD specifically invites comment regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule would not impose any federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance.

The Catalog of Federal Domestic Assistance number applicable to the program affected by this rule is 14.871.

List of Subjects in 24 CFR Part 983

Grant programs—housing and community development, Housing, Low- and moderate-income housing, Rent subsidies, Reporting and record keeping requirements.

For the reasons stated in the preamble, HUD proposes to amend 24 CFR part 983 as follows:

1. Revise 24 CFR part 983 to read as follows:

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

Subpart A—General

Subpart B—Selection of PBV Owner Proposals

Subpart C—Dwelling Units

Subpart D—Requirements for Rehabilitated and Newly Constructed Units

Subpart E—Housing Assistance Payments Contract

Subpart F—Occupancy

Subpart G—Rent to Owner

Subpart H—Payment to Owner

Authority: 42 U.S.C. 1437f and 3535(d).

Subpart A—General

§ 983.1 When PBV rule (this part 983) applies.

Part 983 applies to the project-based voucher (PBV) program. The PBV program is authorized by section

8(o)(13) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(o)(13)).

§ 983.2 When tenant-based voucher rule (24 CFR part 982) applies.

(a) 24 CFR *part 982.* Part 982 is the basic regulation for the tenant-based voucher program. Paragraphs (b) and (c) of this section describe the provisions of part 982 that *do not apply* to the PBV program. The rest of part 982 applies to the PBV program. For use and applicability of voucher program definitions at § 982.4, *see* § 983.3 of this part.

(b) *Types of 24 CFR part 982 provisions that do not apply to PBV.* The following types of provisions in 24 CFR part 982 do not apply to PBV assistance under part 983.

(1) Provisions on issuance or use of a voucher;

(2) Provisions on portability;

(3) Provisions on the following special housing types: shared housing, cooperative housing, manufactured home space rental, and the homeownership option.

(c) *Specific 24 CFR part 982 provisions that do not apply to PBV assistance.* Except as specified below, the following specific provisions in 24 CFR part 982 do not apply to PBV assistance under part 983.

(1) In subpart E of part 982: paragraph (b)(2) of § 982.202, and paragraph (d) of § 982.204;

(2) Subpart G of part 982: subpart G does not apply, except that § 982.310 (owner termination of tenancy) as modified by § 983.257, § 982.312 (absence from unit) as modified by § 983.256(g), and § 982.316 (live-in aide) apply to the PBV Program;

(3) Subpart H of part 982;

(4) In subpart I of part 982: § 982.401(j); paragraphs (a)(3), (c), and (d) of § 982.402; § 982.403; § 982.405(a); and § 982.406;

(5) In subpart J of part 982: § 982.455;

(6) Subpart K of part 982: subpart K does not apply, except that the following provisions of subpart K apply to the PBV Program:

(i) Section 982.503 (for determination of the payment standard amount and schedule for a Fair Market Rent (FMR) area or for a designated part of an FMR area). However, provisions authorizing approval of a higher payment standard as a reasonable accommodation for a particular family that includes a person with disabilities do not apply (since the payment standard amount does not affect availability of a PBV unit for occupancy by a family or the amount paid by the family);

(ii) Section 982.516 (family income and composition; regular and interim examinations);

(iii) Section 982.517 (utility allowance schedule); and

(iv) Sections 982.551 through 982.555.

(7) In Subpart M of part 982:

(i) Sections 982.603, 982.607, 982.611, 982.613(c)(2); and

(ii) Provisions concerning shared housing (§§ 982.615 through 982.618), cooperative housing (§ 982.619), manufactured home space rental (§§ 982.622 through 982.624), and the homeownership option (§§ 982.625 through 982.641).

§ 983.3 PBV definitions.

(a) *Use of PBV definitions.* (1) *PBV terms (defined in this section).* This section defines PBV terms that are used in 24 CFR part 983. For PBV assistance, the definitions in this section apply to use of the defined terms in part 983 and in applicable provisions of part 982. (Section 983.2 specifies which provisions in part 982 apply to PBV assistance under part 983.)

(2) *Other voucher terms (terms defined in 24 CFR 982.4).* (i) The definitions in this section apply instead of definitions of the same terms in 24 CFR 982.4.

(ii) Other voucher terms are defined in § 982.4, but are not defined in this section. These § 982.4 definitions apply to use of the defined terms in part 983 and in provisions of part 982 that apply to part 983.

(b) *PBV definitions.*

1937 Act. The United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*).

Activities of daily living. Eating, bathing, grooming, dressing, and home management activities.

Admission. The point when the family becomes a participant in the PHA's tenant-based or project-based voucher program (initial receipt of tenant-based or project-based assistance). After admission, and so long as the family is continuously assisted with tenant-based or project-based voucher assistance from the PHA, a shift from tenant-based or project-based assistance to the other form of voucher assistance is not a new admission.

Agreement to enter into HAP contract (Agreement). The Agreement is a written contract between the PHA and the owner in the form prescribed by HUD. The Agreement defines requirements for development of housing to be assisted under this section. When development is completed by the owner in accordance with the Agreement, the PHA enters into a HAP contract with the owner. The Agreement is not used for existing housing assisted under this section.

Assisted living facility. A residence facility (including a facility located in a larger multifamily property) that meets all the following criteria:

(1) The facility is licensed and regulated as an assisted living facility by the state, municipality, or other political subdivision;

(2) The facility makes available supportive services to assist residents in carrying out activities of daily living; and

(3) The facility provides separate dwelling units for residents and includes common rooms and other facilities appropriate and actually available to provide supportive services for the residents.

Baseline units. The number of units reserved by HUD for the PHA's program as calculated under 24 CFR 982.102(d)(i) and as adjusted under 24 CFR 982.102(d)(ii).

Comparable rental assistance. A subsidy or other means to enable a family to obtain decent housing in the PHA jurisdiction renting at a gross rent that is not more than forty percent of the family's monthly adjusted income.

Contract units. The housing units covered by a HAP contract.

Development. Construction or rehabilitation of PBV housing after the proposal selection date.

Excepted units (units in a multifamily building not counted against the 25 percent per-building cap). *See* § 983.56(b)(2)(i).

Existing housing. Housing units that already exist on the proposal selection date and that substantially comply with the HQS on that date. (The units must fully comply with the HQS before execution of the HAP contract.)

Fair market rent (FMR). The rent, including the cost of utilities (except telephone), as established by HUD for units of varying sizes (by number of bedrooms), that must be paid in the housing market area to rent privately owned, existing, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities. *See* periodic FMR publications in the **Federal Register** in accordance with 24 CFR part 888.

Family. The person or persons approved by the PHA to reside in a contract unit with assistance under the program.

Gross rent. The sum of the rent to owner plus any utility allowance.

Group home. A dwelling unit that is licensed by a state as a group home for the exclusive residential use of two to twelve persons who are elderly or persons with disabilities (including any live-in aide). Group home is a special housing type. *See* 24 CFR 982.610.

HAP contract. The written housing assistance payments contract between

the PHA and the owner in the form prescribed by HUD.

Household. The family and any PHA-approved live-in aide.

Housing assistance payment. The monthly assistance payment for a PBV unit by a PHA, which includes:

(1) A payment to the owner for rent to owner under the family's lease minus the tenant rent; and

(2) An additional payment to or on behalf of the family, if the utility allowance exceeds the total tenant payment, in the amount of such excess.

Housing quality standards (HQS). The HUD minimum quality standards for housing assisted under the program. *See* 24 CFR 982.401.

HUD. The United States Department of Housing and Urban Development.

Lease. A written agreement between an owner and a tenant for the leasing of a PBV dwelling unit by the owner to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the PHA.

Multifamily building. A building with five or more dwelling units (assisted or unassisted).

Newly constructed housing. Housing units that do not exist on the proposal selection date and are developed after the date of selection pursuant to an Agreement between the PHA and owner for use under the PBV program.

Owner. A person or entity with the legal right to lease or sublease a unit to a participant.

Partially-assisted building. A building where the number of contract units is less than the number of residential units in the building.

Participant. A family that is receiving tenant-based or project-based assistance in a PHA's voucher program.

PHA-owned unit. A PHA-owned or controlled housing unit, as defined in 24 CFR 982.352(b).

Premises. The building or complex in which the contract unit is located, including common areas and grounds.

Program. The voucher program under section 8 of the 1937 Act, including tenant-based or project-based assistance.

Proposal selection date. The date the PHA gives written notice of PBV proposal selection to an owner whose proposal is selected (in a competitive or non competitive selection).

Qualifying families (for purpose of exception to 25 percent per-building cap). *See* § 983.56(b)(2)(ii).

Reasonable rent. A rent determined pursuant to § 983.303 that is not more than rent charged:

(1) For comparable units in the private unassisted market; and

(2) For comparable unassisted units in the premises.

Rehabilitated housing. Housing units that exist on the proposal selection date, but do not substantially comply with the HQS at that date, and are developed, pursuant to an Agreement between the PHA and owner, for use under the PBV program.

Rent to owner. The total monthly reasonable rent payable to the owner under the lease for a contract unit. Rent to owner includes payment for any housing services, including any maintenance and utilities to be provided by the owner in accordance with the lease. (Rent to owner must not include charges for non-housing services.) In the PBV program, the rent to owner is the sum of the tenant rent and the PHA housing assistance payment to the owner.

Responsible entity (RE) (for environmental review). The unit of general local government within which the project is located that exercises land use responsibility or, if HUD determines this infeasible, the county or, if HUD determines that infeasible, the state.

Single family building. A building with no more than four dwelling units (assisted or unassisted).

Site. The grounds where the contract units are located, or will be located after development pursuant to the Agreement.

Special housing type. Subpart M of 24 CFR part 982 states the special regulatory requirements for single room occupancy (SRO) housing, congregate housing, group home, and manufactured home. Subpart M provisions on shared housing, cooperative housing, manufactured home space rental, and the homeownership option do not apply to PBV assistance under this part.

State-certified appraiser. Any individual who satisfies the requirements for certification as a certified general appraiser in a state that has adopted criteria that currently meet or exceed the minimum certification criteria issued by the Appraiser Qualifications Board of the Appraisal Foundation. The state's criteria must include a requirement that the individual has achieved a satisfactory grade upon a state-administered examination consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualifications Board of the Appraisal Foundation. Furthermore, if the Appraisal Foundation has issued a finding that the policies, practices, or procedures of the state are inconsistent with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331–3352), the individual must comply with any additional standards for state-certified appraisers imposed by HUD.

Tenant. The person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.

Tenant-paid utilities. Utility service that is not included in the tenant rent, and which is the responsibility of the assisted family.

Tenant rent. The amount payable monthly by the tenant as rent to the owner. The amount of the tenant rent equals the total tenant payment minus the applicable utility allowance for tenant-paid utilities for the unit occupied by the family.

Total tenant payment. The amount described in 24 CFR 5.628.

Utility allowance. The PHA allowance for the cost of tenant-paid utilities (except telephone) for a unit. The utility allowance is the PHA's estimate of the monthly cost of a reasonable consumption of utilities by an energy-conservative household, consistent with the requirements of the HQS.

Utility reimbursement. The amount, if any, by which the utility allowance for the cost of tenant-paid utilities exceeds the total tenant payment for the assisted family occupying the unit.

Wrong-size unit. A contract unit that is:

(1) Overcrowded because of an increase in the household size; or

(2) Larger than appropriate (''under-occupied'') because of a change in the household size or composition. *See* § 983.259.

§ 983.4 Cross-reference to other Federal requirements.

The following provisions apply to assistance under the PBV program.

Civil money penalty. Penalty for owner breach of HAP contract. *See* 24 CFR 30.68.

Debarment. Prohibition on use of debarred, suspended, or ineligible contractors. *See* 24 CFR 5.105(c) and 24 CFR part 24.

Definitions. See 24 CFR part 5, subpart D.

Disclosure and verification of income information. See 24 CFR part 5, subpart B.

Environmental review. See 24 CFR parts 50 and 58 (*see also* provisions on PBV environmental review at § 983.58).

Fair housing. Nondiscrimination and equal opportunity. *See* 24 CFR 5.105(a).

Fair market rents. See 24 CFR part 888, subpart A.

Fraud. PHA retention of recovered funds. *See* 24 CFR part 792.

Funds. HUD allocation of voucher funds. *See* 24 CFR part 791.

Income and family payment. See 24 CFR part 5, subpart F (especially § 5.603 (definitions), § 5.609 (annual income), § 5.611 (adjusted income), § 5.628 (total tenant payment), § 5.630 (minimum rent), § 5.632 (utility reimbursements), § 5.634(a) (tenant rent), and § 5.661 (section 8 project-based assistance programs: approval for police or other security personnel to live in project)).

Labor standards. Regulations implementing the Davis-Bacon Act, Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708), 29 CFR part 5, and other Federal laws and regulations pertaining to labor standards applicable to an Agreement covering nine or more assisted units.

Lead-based paint. Regulations implementing the Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856). *See* 24 CFR part 35, subparts A, B, H, and R.

Lobbying restriction. Restrictions on use of funds for lobbying. *See* 24 CFR 5.105(b).

Noncitizens. Restrictions on assistance. *See* 24 CFR part 5, subpart E.

Program accessibility. Regulations implementing Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). *See* 24 CFR parts 8 and 9.

Relocation assistance. Regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201–4655). *See* 49 CFR part 24.

Section 3—Training, employment, and contracting opportunities in development. Regulations implementing Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u). *See* 24 CFR part 135.

Uniform financial reporting standards. See 24 CFR part 5, subpart H.

Waiver of HUD rules. See 24 CFR 5.110.

§ 983.5 Description of the project-based voucher program.

(a) *How PBV works.* (1) The PBV program is administered by a PHA that already administers the tenant-based voucher program under an annual contributions contract (ACC) with HUD. In the PBV program, the assistance is ''attached to the structure.'' (*See* description of the difference between ''project-based'' and ''tenant-based'' rental assistance at § 982.1(b) of this chapter).

(2) The PHA enters into a HAP contract with an owner for units in existing housing or in newly constructed or rehabilitated housing.

(3) In the case of newly constructed or rehabilitated housing, the housing is developed under an Agreement between the owner and the PHA. In the Agreement, the PHA agrees to execute a HAP contract after the owner completes the construction or rehabilitation of the units.

(4) During the term of the HAP contract, the PHA makes rental assistance payments to the owner for units leased and occupied by eligible families.

(b) *How PBV is funded.* (1) If a PHA decides to operate a PBV program, the PHA's PBV program is funded with a portion of appropriated funding (budget authority) available under the PHA's voucher ACC. This pool of funding is used to pay rental assistance for both tenant-based and project-based voucher units and to pay PHA administrative fees for administration of tenant-based and project-based voucher assistance.

(2) There is no special or additional funding for project-based vouchers. HUD does not reserve additional units for project-basing and does not provide any additional funding for this purpose.

(c) *PHA discretion to operate PBV program.* A PHA has discretion whether to operate a project-based voucher program. HUD approval is not required.

§ 983.6 Maximum number of PBV units.

(a) The PHA may select owner proposals to provide project-based assistance for up to 20 percent of the baseline units in the PHA voucher program. PHAs are not required to reduce the number of PBV units selected under an Agreement or HAP contract if the number of baseline units are subsequently reduced.

(b) All project-based certificate and project-based voucher units for which the PHA has issued a notice of proposal selection or which are under an Agreement or HAP contract for project-based certificate or project-based voucher assistance count against the 20 percent maximum.

(c) The PHA is responsible for determining the number of baseline units that are available for project-basing and for ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC.

§ 983.7 Uniform Relocation Act.

(a) *Relocation assistance for displaced person.* (1) A displaced person must be provided relocation assistance at the levels described in and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201–4655) and implementing regulations at 49 CFR part 24.

(2) The cost of required relocation assistance may be paid for with funds provided by the owner, or with local public funds, or with funds available from other sources. Relocation costs may not be paid from voucher program funds.

(b) *Real property acquisition requirements.* The acquisition of real property for a PBV project is subject to the URA and 49 CFR part 24, subpart B.

(c) *Responsibility of PHA.* The PHA must require the owner to comply with the URA and 49 CFR part 24.

(d) *Definition of initiation of negotiations.* In computing a replacement housing payment to a residential tenant displaced as a direct result of privately undertaken rehabilitation or demolition of the real property, the term ''initiation of negotiations'' means the execution of the Agreement between the owner and the PHA.

§ 983.8 Equal opportunity requirements.

(a) The PBV program requires compliance with all equal opportunity requirements under federal law and regulation, including the authorities cited at 24 CFR 5.105(a).

(b) The PHA must comply with PHA Plan civil rights certification submitted by the PHA in accordance with 24 CFR 903.70.

§ 983.9 Special housing types.

(a) *Applicability.* (1) For applicability of rules on special housing types at 24 CFR part 982, subpart M, *see* § 983.2.

(2) In the PBV program, the PHA may not provide assistance for shared housing, cooperative housing, manufactured home space rental, or the homeownership option.

(b) *Group homes.* A group home may include one or more group home units. A separate lease is executed for each elderly person or person with disabilities who resides in a group home.

§ 983.10 Project-based certificate program.

(a) *What is it?* ''Project-based certificate program'' means project-based assistance attached to units pursuant to an Agreement executed by a PHA and owner before January 16, 2001, and in accordance with:

(1) The regulations for the project-based certificate program at 24 CFR part 983, codified as of May 1, 2001; and

(2) Section 8(d)(2) of the 1937 Act, as in effect before October 21, 1998 (the date of enactment of Title V of Public Law 105–276, the Quality Housing and Work Responsibility Act of 1998, codified at 42 U.S.C. 1437 *et seq.*).

(b) *What rules apply?* Units under the project-based certificate program are

subject to the provisions of 24 CFR part 983 codified as of May 1, 2001 (notwithstanding repeal of such provisions).

Subpart B—Selection of PBV Owner Proposals

§ 983.51 Owner proposal selection procedures.

(a) *Procedures for selecting PBV proposals.* The PHA administrative plan must describe the procedures for owner submission of PBV proposals and for PHA selection of PBV proposals. Before selecting a PBV proposal, the PHA must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing (§§ 983.53 and 983.54), complies with the cap on the number of PBV units per building (§ 983.56), and meets the site selection standards (§ 983.57).

(b) *Selection of PBV proposals.* The PHA must select PBV proposals in accordance with the selection procedures in the PHA administrative plan. The PHA must select PBV proposals by either of the following two methods.

(1) Competitive selection of a proposal. The PHA may not limit proposals to a single site or impose restrictions that explicitly or practically preclude competition between or among owner proposals for PBV housing on different sites.

(2) Selection of a proposal for housing assisted under a federal, state, or local government housing assistance, community development, or supportive services program that requires competitive selection of proposals (*e.g.*, HOPE VI, HOME, and tax credit units), where the proposal has been selected in accordance with such program's competitive selection requirements.

(c) *Public notice of PBV competition.* If the PHA will be selecting proposals by competitive selection under paragraph (b)(1) of this section, PHA procedures for selecting PBV proposals must be designed and actually operated to provide broad public notice of the opportunity to offer PBV proposals for competitive selection. The public notice procedures may include publication of the public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice. The public notice of the competitive selection must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

(d) *PHA notice of owner selection.* The PHA must give prompt written notice to the party that submitted a selected proposal and must also give prompt public notice of such selection. Public notice procedures may include publication of public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice.

(e) *PHA-owned units.* A PHA-owned unit may only be assisted under the PBV program if the HUD field office or an independent entity approved by HUD reviews the selection process and determines that the PHA-owned units were appropriately selected based on the selection procedures specified in the PHA administrative plan. Under no circumstances may PBV assistance be used with a public housing unit.

(f) *Public review of PHA selection decision documentation.* The PHA must make available for public inspection documentation regarding the basis for the PHA selection of a PBV proposal.

§ 983.52 Housing type.

The PHA may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an Agreement.

§ 983.53 Prohibition of assistance for ineligible units

(a) *Ineligible unit.* The PHA may not attach or pay PBV assistance for units in the following types of housing:

(1) Shared housing;

(2) Units on the grounds of a medical, mental, or similar institution;

(3) Nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care. However, the PHA may attach PBV assistance for a dwelling unit in an assisted living facility that provides home health care services such as nursing and therapy for residents of the housing;

(4) Units on the grounds of a penal, reformatory, or similar institution;

(5) Units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students of the institution;

(6) Manufactured homes;

(7) Cooperative housing.

(b) *High rise elevator project for families with children.* The PHA may not attach or pay PBV assistance to a high rise elevator project that may be occupied by families with children unless HUD determines there is no practical alternative. HUD may make this determination for a PHA's project-based voucher program, in whole or in part, and need not review each project on a case-by-case basis.

(c) *Prohibition against assistance for owner-occupied unit.* The PHA may not attach or pay PBV assistance for a unit occupied by an owner of the housing.

(d) *Prohibition against selecting unit occupied by an ineligible family.* Before a PHA selects a specific unit to which assistance is to be attached, the PHA must determine whether the unit is occupied, and if occupied, whether the unit's occupants are eligible for assistance. The PHA must not select or enter into an Agreement or HAP contract for a unit occupied by a family ineligible for participation in the PBV program.

§ 983.54 Prohibition of assistance for units in subsidized housing.

A PHA may not attach or pay PBV assistance to units in any of the following types of subsidized housing:

(a) Public housing;

(b) A unit subsidized with any other form of Section 8 assistance (tenant-based or project-based);

(c) A unit subsidized with any governmental rent subsidy (a subsidy that pays all or any part of the rent);

(d) A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;

(e) A unit subsidized with Section 236 rental assistance payments (12 U.S.C. 1715z–1). However, the PHA may attach assistance to a unit subsidized with Section 236 interest reduction payments;

(f) A unit subsidized with rental assistance payments under Section 521 of the Housing Act of 1949, 42 U.S.C. 1490a (a Rural Housing Service Program). However, the PHA may attach assistance for a unit subsidized with Section 515 interest reduction payments (42 U.S.C. 1485);

(g) A Section 202 project for non-elderly persons with disabilities (assistance under Section 162 of the Housing and Community Development Act of 1987, 12 U.S.C. 1701q note);

(h) Section 811 project-based supportive housing for persons with disabilities (42 U.S.C. 8013);

(i) Section 202 supportive housing for the elderly (12 U.S.C. 1701q);

(j) A Section 101 rent supplement project (12 U.S.C. 1701s);

(k) A unit subsidized with any form of tenant-based rental assistance (as defined at § 982.1(b)(2)) (*e.g.*, a unit subsidized with tenant-based rental assistance under the HOME program, 42 U.S.C. 12701 *et seq.*);

(l) A unit with any other duplicative Federal, state, or local housing subsidy,

as determined by HUD or by the PHA in accordance with HUD requirements. For this purpose, ''housing subsidy'' does not include the housing component of a welfare payment; a social security payment; a Federal, state, or local tax concession (such as relief from local real property taxes); or a tax credit.

§ 983.55 Prohibition of excess public assistance.

(a) *Subsidy layering requirements.* The PHA may only provide PBV assistance in accordance with HUD subsidy layering regulations (24 CFR part 4.13) and other requirements. The subsidy layering review is intended to prevent excessive public assistance for the housing by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from Federal, state, or local agencies, including assistance such as tax concessions or tax credits.

(b) *When subsidy layering review is conducted.* The PHA may not enter an Agreement or HAP contract until HUD or an independent entity approved by HUD has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements.

(c) *Owner certification.* The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements.

§ 983.56 Cap on number of PBV units in each building.

(a) *25 percent per building cap.* (1) Except as provided in paragraph (b) of this section, the PHA may not select a proposal to provide PBV assistance for units in a building or enter into an Agreement or HAP contract to provide PBV assistance for units in a building, if the total number of dwelling units in the building that will receive PBV assistance or other federal project-based housing assistance during the term of the PBV HAP is more than 25 percent of the number of dwelling units (assisted or unassisted) in the building.

(2) In calculating application of this cap, any units in the building receiving federal project-based assistance count against the cap—including units assisted or to be assisted under other HAP contracts or project-based assistance programs (*e.g.*, section 8 loan management or property disposition units or other PBV units).

(b) *Exception to 25 percent per building cap.* (1) *When PBV units are not counted against cap.* In the following cases, PBV units are not counted against the 25 percent per building cap:

(i) Units in a single family building;

(ii) Excepted units in a multifamily building.

(2) *Terms.* (i) ''Excepted units'' means units in a multifamily building set aside for occupancy and occupied by qualifying families.

(ii) ''Qualifying families'' means:

(A) Elderly or disabled families; or

(B) Families receiving supportive services under a voucher, project-based certificate, or public housing family self-sufficiency (FSS) program or families who are in compliance with their FSS contract of participation at the beginning of the assisted unit lease term. If a family has received FSS supportive services as a resident of an excepted unit and then completes its FSS contract of participation, the unit continues to count as an excepted unit for as long as the family resides in the unit.

(3) *Set-aside for qualifying families.* (i) In rental of units in a multifamily building pursuant to the PBV HAP, the owner must set aside the number of excepted units for occupancy by qualifying families.

(ii) The PHA may refer only qualifying families for occupancy of excepted units.

(c) *Additional, local requirements promoting partially assisted buildings.* A PHA may establish local requirements designed to promote PBV assistance in partially assisted buildings. For example, a PHA may:

(1) Establish a per-building cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily building containing excepted units or in a single family building,

(2) Determine not to provide PBV assistance for excepted units, or

(3) Establish a per building cap of less than 25 percent.

§ 983.57 Site selection standards.

(a) *Applicability.* The site selection requirements in paragraph (d) of this section only apply to site selection for existing housing and rehabilitated PBV housing. The site selection requirements in paragraph (e) of this section only apply to site selection for newly constructed PBV housing. Other provisions of this section apply to selection of a site for any form of PBV housing, including existing housing, newly constructed housing, and rehabilitated housing.

(b) *Compliance with PBV goals, civil rights requirements, and HQS.* The PHA may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an Agreement or HAP contract for units on the site, unless the PHA has determined that:

(1) Project-based assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.

(2) The site is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d(4)) and HUD's implementing regulations at 24 CFR part 1; Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601–3629) and HUD's implementing regulations at 24 CFR part 100 *et seq.*; Executive Order 11063 (27 FR 11527; 3 CFR, 1959–1963 Comp., p. 652) and HUD's implementing regulations at 24 CFR part 107.

(3) The site meets the HQS site standards at 24 CFR 982.401(l).

(c) *PHA PBV site selection policy.* (1) The PHA administrative plan must establish the PHA's policy for selection of PBV sites in accordance with this section.

(2) The site selection policy must explain how the PHA's site selection procedures promote the PBV goals.

(3) The PHA must select PBV sites in accordance with the PHA's site selection policy in the PHA administrative plan.

(d) *Existing and rehabilitated housing site and neighborhood standards.* A site for existing or rehabilitated housing must meet the following site and neighborhood standards. The site must:

(1) Be adequate in size, exposure, and contour to accommodate the number and type of units proposed; adequate utilities and streets must be available to service the site. (The existence of a private disposal system and private sanitary water supply for the site, approved in accordance with law, may be considered adequate utilities.)

(2) Promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(3) Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted,

standard housing of similar market rents.

(4) Be so located that travel time and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers is not excessive. While it is important that housing for the elderly not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects.

(e) *New construction site and neighborhood standards.* A site for newly constructed housing must meet the following site and neighborhood standards:

(1) The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.

(2) The site must not be located in an area of minority concentration, except as permitted under paragraph (e)(3) of this section, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

(3) A project may be located in an area of minority concentration only if:

(A) Sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration (see paragraph (e)(3)(C), (D), and (E) of this section for further guidance on this criterion); or

(B) The project is necessary to meet overriding housing needs that cannot be met in that housing market area (see paragraph (e) (3)(F) of this section for further guidance on this criterion).

(C) ''Sufficient'' does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year, that, over a period of several years, will approach an appropriate balance of housing choices within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for low-income minority families and in relation to the racial mix of the locality's population.

(D) Units may be considered ''comparable opportunities'' if they have the same household type (elderly, disabled, family, large family) and tenure type (owner/renter); require approximately the same tenant contribution towards rent; serve the same income group; are located in the same housing market; and are in standard condition.

(E) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for low-income minority families in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with other factors relevant to housing choice:

(i) A significant number of assisted housing units are available outside areas of minority concentration.

(ii) There is significant integration of assisted housing projects constructed or rehabilitated in the past 10 years, relative to the racial mix of the eligible population.

(iii) There are racially integrated neighborhoods in the locality.

(iv) Programs are operated by the locality to assist minority families that wish to find housing outside areas of minority concentration.

(v) Minority families have benefited from local activities (*e.g.*, acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority families outside of areas of minority concentration.

(vi) A significant proportion of minority households has been successful in finding units in non-minority areas under the tenant-based assistance programs.

(vii) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

(F) Application of the ''overriding housing needs'' criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably improving the economic character of the area (a ''revitalizing area''). An ''overriding housing need,'' however, may not serve as the basis for determining that a site is acceptable, if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, religion, sex, national origin, age, familial status, or disability renders sites outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

(4) The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(5) The neighborhood must not be one which is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

(6) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(7) Except for new construction housing designed for elderly persons, travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive.

§ 983.58 Environmental review.

(a) *HUD environmental regulations.* Activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58.

(b) *Who performs the environmental review?* (1) Under 24 CFR part 58, a unit of general local government, a county or a state (the ''responsible entity'' or ''RE'') is responsible for the federal environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and related applicable Federal laws and authorities in accordance with 24 CFR 58.5 and 58.6.

(2) If a PHA objects in writing to the RE's performing the federal environmental review, or if the RE declines to perform the review, then, HUD may perform the environmental review itself (24 CFR 58.11). 24 CFR part 50 governs HUD performance of the environmental review.

(c) *Limitations on actions before completion of the environmental review.* (1) The PHA may not enter an Agreement or HAP contract with an owner, and the PHA, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property for a project under this part or commit or expend program or local funds for PBV activities under this part, until one of the following occurs:

(i) The responsible entity has completed the environmental review procedures required by 24 CFR part 58, and HUD has approved the environmental certification and request for release of funds; or

(ii) HUD has performed an environmental review under 24 CFR part 50 and has notified the PHA in writing of environmental approval of the site.

(2) HUD will not release funds for PBV assistance under this part if the PHA, the owner, or any other party commits funds under this part (*i.e.*, enters an Agreement or HAP contract or otherwise incurs any costs or expenditures to be paid or reimbursed with such funds) before the PHA submits and HUD approves its request for release of funds (where such submission is required).

(d) *PHA duty to supply information.* The PHA must supply all available, relevant information necessary for the RE (or HUD, if applicable) to perform any required environmental review for any site.

(e) *Mitigating measures.* The PHA must require the owner to carry out mitigating measures required by the RE (or HUD, if applicable) as a result of the environmental review.

§ 983.59 PHA-owned units.

(a) *Selection of PHA-owned units.* The selection of PHA-owned units must be done in accordance with § 983.51(e).

(b) *Inspection and determination of reasonable rent by independent entity.* In the case of PHA-owned units, the following program services may not be performed by the PHA, but must be performed instead by an independent entity approved by HUD.

(1) Determination of rent to owner for the PHA-owned units. Rent to owner for PHA-owned units is determined pursuant to §§ 983.301 through 983.305 in accordance with the same requirements as for other units, except that the independent entity approved by HUD must establish the initial contract rents based on an appraisal by a licensed, state-certified appraiser; and

(2) Inspection of PHA-owned units as required by § 983.103(f).

(c) *Nature of independent entity.* The independent entity that performs these program services may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government) or another HUD-approved public or private independent entity.

(d) *Payment to independent entity and appraiser.* (1) The PHA may only compensate the independent entity and appraiser from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The PHA may not use other program receipts to compensate the independent entity and appraiser for their services.

(2) The PHA, independent entity, and appraiser may not charge the family any fee for the appraisal or the services provided by the independent entity.

Subpart C—Dwelling Units

§ 983.101 Housing quality standards.

(a) *HQS applicability.* Except as otherwise provided in this section, 24 CFR 982.401 (housing quality standards) applies to the PBV program. 24 CFR 5.703 (physical condition standards) does not apply to the PBV program.

(b) *HQS for special housing types.* For special housing types assisted under the PBV program, housing quality standards in 24 CFR part 982, subpart M, apply to the PBV program. (Shared housing, cooperative housing, manufactured home space rental and the homeownership option are not assisted under the PBV program.)

(c) *Lead-based paint requirements.* (1) The lead-based paint requirements at § 982.401(j) of this chapter do not apply to the PBV program.

(2) The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

(d) *HQS enforcement.* Parts 982 and 983 of this chapter, do not create any right of the family or any party, other than HUD or the PHA, to require enforcement of the HQS requirements or to assert any claim against HUD or the PHA for damages, injunction, or other relief for alleged failure to enforce the HQS.

(e) *Additional PHA quality and design requirements.* This section establishes the minimum federal housing quality standards for PBV housing. However, the PHA may elect to establish additional requirements for quality, architecture, or design of PBV housing, and any such additional requirements must be specified in the Agreement.

§ 983.102 Housing accessibility for persons with disabilities.

(a) *Program accessibility.* The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. The PHA shall ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR part 8, subpart C.

(b) *Design and construction.* Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable.

§ 983.103 Inspecting units.

(a) *Pre-selection inspection.* (1) *Inspection of site.* The PHA must examine the proposed site before the proposal selection date.

(2) *Inspection of existing units.* If the units to be assisted already exist, the PHA must inspect all the units before the proposal selection date, and must determine whether the units substantially comply with the HQS. To qualify as existing housing, units must substantially comply with the HQS on the proposal selection date. However, the PHA may not execute the HAP contract until the units fully comply with the HQS.

(b) *Pre-HAP contract inspections.* The PHA must inspect each contract unit before execution of the HAP contract. The PHA may not enter into a HAP contract covering a unit until the unit fully complies with the HQS.

(c) *Turnover inspections.* Before providing assistance to a new family in a contract unit, the PHA must inspect the unit. The PHA may not provide assistance on behalf of the family until the unit fully complies with the HQS.

(d) *Annual inspections.* (1) At least annually during the term of the HAP contract, the PHA must initially inspect a random sample, consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with the HQS. Turnover inspections pursuant to paragraph (c) of this section are not counted towards meeting this annual inspection requirement.

(2) If more than 20 percent of the initially inspected contract units in a building fail the initial annual inspection, the PHA must reinspect 100 percent of the contract units in the building.

(e) *Other inspections.* (1) The PHA must inspect contract units whenever needed to determine that the contract units comply with the HQS and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. The PHA must take into account complaints

and any other information coming to its attention in scheduling inspections.

(2) The PHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of the HQS. (Family HQS obligations are specified in § 982.404(b) of this chapter.)

(3) The PHA supervisory quality control HQS inspections pursuant to § 982.405(b) of this chapter must include a representative sample of both tenant-based and project-based units.

(f) *Inspecting PHA-owned units.* (1) In the case of PHA-owned units, the inspections required under this section must be performed by an independent agency designated in accordance with § 983.59, rather than by the PHA.

(2) The independent entity must furnish a copy of each inspection report to the PHA, and to the HUD field office where the project is located.

(3) The PHA must take all necessary actions in response to inspection reports from the independent agency, including exercise of contractual remedies for violation of the HAP contract by the PHA-owner.

Subpart D—Requirements for Rehabilitated and Newly Constructed Units

§ 983.151 Applicability.

This subpart D applies to PBV assistance for newly constructed or rehabilitated housing. This subpart D does not apply to PBV assistance for existing housing.

§ 983.152 Purpose and content of the Agreement to enter into HAP contract.

(a) *Requirement.* The PHA must enter into an Agreement with the owner. The Agreement must be in the form required by HUD headquarters (*see* § 982.162 of this chapter).

(b) *Purpose of Agreement.* In the Agreement the owner agrees to develop the contract units to comply with the HQS, and the PHA agrees that, upon timely completion of such development in accordance with the terms of the Agreement, the PHA will enter into a HAP contract with the owner for the contract units.

(c) *Description of housing.* (1) At a minimum, the Agreement must describe the following features of the housing to be developed (newly constructed or rehabilitated) and assisted under the PBV program:

(i) Site;

(ii) Location of contract units on site;

(iii) Number of contract units by area (size) and number of bedrooms and bathrooms;

(iv) Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent to owner;

(v) Utilities available to the contract units, including a specification of utility services to be paid by owner (without charges in addition to rent) and utility services to be paid by the tenant;

(vi) Indication of whether or not the design and construction requirements of the Fair Housing Act and implementing regulations at 24 CFR 100.205 and the accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR 8.22 and 8.23 apply to units under the Agreement. If these requirements are applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement, as specified in paragraph (c)(1)(viii) of this section.

(vii) Estimated initial rents to owner for the contract units;

(viii) Description of the work to be performed under the Agreement. If the Agreement is for rehabilitation of units, the work description must include the rehabilitation work write up and, where determined necessary by the PHA, specifications and plans. If the Agreement is for new construction, the work description must include the working drawings and specifications.

(2) At a minimum, the housing must comply with the HQS. The PHA may elect to establish additional requirements for quality, architecture, or design of PBV housing, over and above the HQS, and any such additional requirement must be specified in the Agreement.

§ 983.153 When Agreement is executed.

(a) *Prohibition of excess subsidy.* The PHA may not enter the Agreement with the owner until the subsidy layering review is completed (*see* § 983.55).

(b) *Environmental approval.* The PHA may not enter the Agreement with the owner until the environmental review is completed and the PHA has received the environmental approval (*see* § 983.58).

(c) *Prompt execution of Agreement.* The Agreement must be executed promptly after PHA notice of proposal selection to the selected owner.

§ 983.154 Conduct of development work.

(a) *Development requirements.* The owner must carry out development work in accordance with the Agreement, and the requirements of this section.

(b) *Labor standards.* (1) In the case of an Agreement for development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in development of the housing.

(2) The HUD prescribed form of Agreement shall include the labor standards clauses required by HUD.

(3) The owner and the owner's contractors and subcontractors must comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable federal labor relations laws and regulations. The PHA must monitor compliance with labor standards.

(c) *Equal opportunity.* (1) *Section 3*—Training, employment, and contracting opportunities. The owner must comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135.

(2) *Equal employment opportunity.* The owner must comply with Federal equal employment opportunity requirements of Executive Orders 11246 as amended (3 CFR, 1964–1965 Comp., p. 339), 11625 (3 CFR, 1971–1975 Comp., p. 616), 12432 (3 CFR, 1983 Comp., p. 198) and 12138 (3 CFR 1977 Comp., p. 393).

(d) *Eligibility to participate in Federal programs and activities.* The Agreement and HAP contract shall include a certification by the owner that the owner and other project principals (including the officers and principal members, shareholders, investors, and other parties having a substantial interest in the project) are not on the U.S. General Services Administration list of parties excluded from federal procurement and nonprocurement programs.

(e) *Disclosure of conflict of interest.* The owner must disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.

§ 983.155 Completion of housing.

(a) *Completion deadline.* The owner must develop and complete the housing in accordance with the Agreement. The Agreement must specify the deadlines for completion of the housing, and for the owner to submit required evidence of completion.

(b) *Required evidence of completion.* (1) *Minimum submission.* At a minimum, the owner must submit the following evidence of completion to the PHA in the form and manner required by the PHA and HUD:

(i) Owner certification that the work has been completed in accordance with the HQS and all requirements of the Agreement; and

(ii) Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.

(2) *Additional documentation.* At the discretion of the PHA or as required by HUD, the Agreement may specify additional documentation that must be submitted by the owner to evidence completion of the housing. For example, such documentation may include:

(i) A certificate of occupancy or other evidence that the units comply with local requirements (such as code and zoning requirements); and

(ii) An architect's certification that the housing complies with:

(A) HUD housing quality standards;

(B) State, local, or other building codes;

(C) Zoning;

(D) The rehabilitation work write-up (for rehabilitated housing) or the work description (for newly constructed housing); or

(E) Any additional design or quality requirements pursuant to the Agreement.

§ 983.156 PHA acceptance of completed units.

(a) *PHA determination of completion.* When the PHA has received owner notice that the housing is completed:

(1) The PHA must inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with the HQS and any additional requirement imposed by the PHA under the Agreement.

(2) The PHA must determine if the owner has submitted all required evidence of completion.

(3) If the work has not been completed in accordance with the Agreement, the PHA must not enter into the HAP contract.

(b) *Execution of HAP contract.* If the PHA determines that the housing has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, the PHA must submit the HAP contract for execution by the owner, and must then execute the HAP contract.

Subpart E—Housing Assistance Payments Contract

§ 983.201 Applicability.

Subpart E applies to all PBV assistance under this part 983 (including assistance for existing, newly constructed, or rehabilitated housing).

§ 983.202 Purpose of HAP contract.

(a) *Requirement.* The PHA must enter into a HAP contract with the owner. The HAP contract must be in the form required by HUD headquarters (*see* § 982.162 of this chapter).

(b) *Purpose of HAP contract.* (1) The purpose of the HAP contract is to provide housing assistance payments for eligible families.

(2) The PHA makes housing assistance payments to the owner in accordance with the HAP contract. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. HUD provides funds to the PHA to make housing assistance payments to owners for eligible families.

§ 983.203 HAP contract information.

The HAP contract must specify:

(a) The total number of contract units by number of bedrooms;

(b) Information needed to identify the site and the building or buildings where the contract units are located. The information must include the project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;

(c) Information needed to identify the specific contract units in each building. The information must include the number of contract units in the building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;

(d) Services, maintenance, and equipment to be supplied by the owner without charges in addition to the rent to owner;

(e) Utilities available to the contract units, including a specification of utility services to be paid by the owner (without charges in addition to rent) and utility services to be paid by the tenant;

(f) Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(g) The HAP contract term;

(h) The number of units in any building that will exceed the 25 percent per building cap (as described in § 983.56), which will be set-aside for occupancy by qualifying families (elderly or disabled families and FSS families); and

(i) The initial rent to owner (for the first 12 months of the HAP contract term).

§ 983.204 When HAP contract is executed.

(a) *PHA inspection of housing.* (1) Before execution of the HAP contract, the PHA must inspect each contract unit in accordance with § 983.103(b).

(2) The PHA may not enter into a HAP contract for any contract unit until the PHA has determined that the unit complies with the HQS.

(b) *Existing housing.* In the case of existing housing, the HAP contract must be executed promptly after PHA selection of the owner proposal and PHA inspection of the housing.

(c) *Newly constructed or rehabilitated housing.* (1) In the case of newly constructed or rehabilitated housing the HAP contract must be executed after the PHA has inspected the completed units and has determined that the units have been completed in accordance with the Agreement and the owner has furnished all required evidence of completion (*see* §§ 983.155 and 983.156).

(2) In the HAP contract, the owner certifies that the units have been completed in accordance with the Agreement. Completion of the units by the owner, and acceptance of units by the PHA is subject to the provisions of the Agreement.

§ 983.205 Term of HAP contract.

(a) *Ten year initial term.* The PHA may enter into a HAP contract with an owner for an initial term of up to ten years for each contract unit. The length of the term of the HAP contract for any contract unit may not be less than one year, nor more than ten years.

(b) *Extension of term.* Within one year before expiration, the PHA may agree to extend the term of the HAP contract for an additional term of up to one year if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families. Subsequent extensions are subject to the same limitations. Any extension of the term must be on the form and subject to the conditions prescribed by HUD at the time of the extension.

(c) *Termination by PHA—insufficient funding.* (1) The HAP contract must provide that the term of the PHA's contractual commitment is subject to the availability of sufficient appropriated funding (budget authority) as determined by HUD or by the PHA in accordance with HUD instructions. For purposes of this section, ''sufficient funding'' means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract.

(2) The availability of sufficient funding must be determined by HUD or by the PHA in accordance with HUD

instructions. If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, the PHA has the right to terminate the HAP contract by notice to the owner for all or any of the contract units. Such action by the PHA shall be implemented in accordance with HUD instructions.

(d) *Termination by owner—reduction below initial rent.* The owner may terminate the HAP contract, upon notice to the PHA, if the amount of the rent to owner for any contract unit, as adjusted on any anniversary date in accordance with § 983.302, is reduced below the amount of the initial rent to owner (rent to owner at the beginning of the HAP contract term). In this case, the assisted families residing in the contract units will be offered tenant-based voucher assistance.

§ 983.206 HAP contract amendments (to add or substitute contract units).

(a) *Amendment to substitute contract units.* At the discretion of the PHA and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same building for a previously covered contract unit. Prior to such substitution, the PHA must inspect the proposed substitute unit, and must determine the reasonable rent for such unit.

(b) *Amendment to add contract units.* At the discretion of the PHA, and provided that the total number of units in a building that will receive PBV assistance or other project-based assistance will not exceed 25 percent of the number of dwelling units (assisted or unassisted) in the building or the 20 percent of baseline units as provided in 24 CFR 983.6, a HAP contract may be amended during the three year period immediately following the execution date of the HAP contract to add additional PBV contract units in the same building. An amendment to the HAP contract is subject to all PBV requirements (*e.g.*, compliance with Davis-Bacon wage rates during construction), except that a new PBV proposal competition is not required. The anniversary and expiration dates of the HAP contract for the additional units must be the same as the anniversary and expiration dates of the HAP contract term for the PBV units originally placed under HAP contract.

(c) *Staged completion of contract units.* Even if contract units are placed under the HAP contract in stages commencing on different dates, there is a single annual anniversary for all contract units under the HAP contract. The annual anniversary for all contract units is the annual anniversary date for the first contract units placed under the HAP contract. The expiration of the HAP contract for all the contract units completed in stages must be concurrent with the end of the HAP contract term for the units originally placed under HAP contract.

§ 983.207 Condition of contract units.

(a) *Owner maintenance and operation.* (1) The owner must maintain and operate the contract units and premises in accordance with the HQS, including performance of ordinary and extraordinary maintenance.

(2) The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with the PHA and in the lease with each assisted family.

(3) At the discretion of the PHA, the HAP contract may also require continuing owner compliance during the HAP term with additional housing quality requirements specified by the PHA (in addition to, but not in place of, compliance with the HUD-prescribed HQS). Such additional requirements may be designed to assure continued compliance with any design, architecture, or quality requirement specified in the Agreement.

(b) *Remedies for HQS violation.* (1) The PHA must vigorously enforce the owner's obligation to maintain contract units in accordance with the HQS. The PHA may not make any HAP payment to the owner for a contract unit covering any period during which the contract unit does not comply with the HQS.

(2) If the PHA determines that a contract unit is not in accordance with the housing quality standards (or other HAP contract requirement), the PHA may exercise any of its remedies under the HAP contract for all or any contract units. Such remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

(c) *Maintenance and replacement—Owner's standard practice.* Maintenance and replacement (including redecoration) must be in accordance with the standard practice for the building concerned as established by the owner.

§ 983.208 Owner responsibilities.

The owner is responsible for performing all of the owner responsibilities under the Agreement and the HAP contract. Section 982.452 of this chapter (Owner responsibilities) applies.

§ 983.209 Owner certification.

By execution of the HAP contract, the owner certifies that at such execution and at all times during the term of the HAP contract:

(a) All contract units are in good and tenantable condition. The owner is maintaining the premises and all contract units in accordance with the HQS.

(b) The owner is providing all the services, maintenance, equipment, and utilities as agreed to under the HAP contract and the leases with assisted families.

(c) Each contract unit for which the owner is receiving housing assistance payments is leased to an eligible family referred by the PHA, and the lease is in accordance with the HAP contract and HUD requirements.

(d) To the best of the owner's knowledge, the members of the family reside in each contract unit for which the owner is receiving housing assistance payments, and the unit is the family's only residence.

(e) The owner (including a principal or other interested party) is not the parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit.

(f) The amount of the housing assistance payment is the correct amount due under the HAP contract.

(g) The rent to owner for each contract unit does not exceed rents charged by the owner for other comparable unassisted units.

(h) Except for the housing assistance payment and the tenant rent as provided under the HAP contract, the owner has not received and will not receive any payment or other consideration (from the family, the PHA, HUD, or any other public or private source) for rental of the contract unit.

(i) The family does not own or have any interest in the contract unit.

Subpart F—Occupancy

§ 983.251 How participants are selected.

(a) *Who may receive PBV assistance?* (1) The PHA may select families who are participants in the PHA's tenant-based voucher program and families who have applied for admission to the voucher program.

(2) Except for voucher participants (determined eligible at original admission to the voucher program), the PHA may only select families determined eligible for admission at commencement of PBV assistance.

(b) *Protection of in-place families.* (1) The term ''in-place family'' means an eligible family residing in a proposed contract unit on the proposal selection date.

(2) In order to minimize displacement of in-place families, if a unit to be placed under contract that is either an existing unit or one requiring rehabilitation is occupied by an eligible family on the proposal selection date, the in-place family must be offered the opportunity to lease an appropriately sized project-based assisted unit in the project. (However, the PHA may deny assistance for the grounds specified in §§ 982.552 and 982.553 of this chapter.) Admission of such families is not subject to income-targeting under § 982.201(b)(2)(i). The PHA shall give such families priority for admission to the PBV program.

(c) *Selection from PHA waiting list.* (1) Applicants who will occupy PBV units must be selected by the PHA from the PHA waiting list. The PHA must select applicants from the waiting list in accordance with the policies in the PHA administrative plan.

(2) The PHA may use a separate waiting list for admission to PBV units or may use the same waiting list for both tenant-based assistance and PBV assistance. If the PHA chooses to use a separate waiting list for admission to PBV units, the PHA must offer to place applicants who are listed on the waiting list for tenant-based assistance on the waiting list for PBV assistance.

(3) The PHA may use separate waiting lists for PBV units in individual projects or buildings (or for sets of such units) or may use a single waiting list for the PHA's whole PBV program. In either case, the waiting list may establish criteria or preferences for occupancy of particular units.

(4) The PHA may merge the waiting list for PBV assistance with the PHA waiting list for admission to another assisted housing program.

(5) The PHA may place families referred by the PBV owner on its PBV waiting list.

(6) Not less than 75 percent of the families admitted to a PHA's tenant-based and project-based voucher programs during the PHA fiscal year from the PHA waiting list shall be extremely low-income families. The income-targeting requirements at § 982.201(b)(2) of this chapter apply to the total of admissions to the PHA's project-based voucher program and tenant-based voucher program during the PHA fiscal year from the PHA waiting list for such programs.

(7) In selecting families to occupy PBV units with special accessibility features for persons with disabilities, the PHA must first refer families who require such accessibility features to the owner (*see* 24 CFR 8.26 and 100.202).

(d) *Offer of PBV assistance.* (1) If a family refuses the PHA's offer of PBV assistance, such refusal does not affect the family's position on the PHA waiting list for tenant-based assistance.

(2) If a PBV owner rejects a family for admission to the owner's PBV units, such rejection by the owner does not affect the family's position on the PHA waiting list for tenant-based assistance.

(3) The PHA may not take any of the following actions because an applicant has applied for, received or refused an offer of PBV assistance:

(i) Refuse to list the applicant on the PHA waiting list for tenant-based assistance;

(ii) Deny any admission preference for which the applicant is currently qualified;

(iii) Change the applicant's place on the waiting list based on preference, date and time of application, or other factors affecting selection under the PHA selection policy; or

(iv) Remove the applicant from the waiting list for tenant-based voucher assistance.

§ 983.252 PHA information for accepted family.

(a) *Oral briefing.* When a family accepts an offer of PBV assistance, the PHA must give the family an oral briefing. The briefing must include information on the following subjects:

(1) A description of how the program works; and

(2) Family and owner responsibilities.

(b) *Information packet.* The PHA must give the family a packet that includes information on the following subjects:

(1) How the PHA determines the total tenant payment for a family; and

(2) Family obligations under the program.

(c) *Providing information for persons with disabilities.* (1) If the family head or spouse is a disabled person, the PHA must take appropriate steps to assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing.

(2) The PHA shall have some mechanism for referring to accessible PBV units a family that includes a person with mobility impairment.

§ 983.253 Leasing of contract units.

(a) *Owner selection of tenants.* (1) During the term of the HAP contract, the owner must lease contract units only to eligible families selected and referred by the PHA from the PHA waiting list.

(2) The owner may apply its own admission standards in determining whether to lease a unit to a family referred by the PHA.

(b) *Size of unit.* The contract unit leased to each family must be appropriate for the size of the family under the PHA's subsidy standards.

§ 983.254 Vacancies.

(a) *Filling vacant units.* (1) The owner must promptly notify the PHA of any vacancy or anticipated vacancy in a contract unit. After receiving the owner notice, the PHA must make every reasonable effort to refer promptly a sufficient number of families for the owner to fill such vacancies.

(2) The owner must lease vacant contract units only to eligible families on the PHA waiting list referred by the PHA.

(3) The PHA and the owner must make reasonable good faith efforts to minimize the likelihood and length of any vacancy.

(b) *Reducing number of contract units.* If any contract units have been vacant for a period of 120 or more days since owner notice of vacancy (and notwithstanding the reasonable good faith efforts of the PHA to fill such vacancies), the PHA may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (by number of bedrooms) that that have been vacant for such period.

§ 983.255 Tenant screening.

(a) *PHA option.* (1) The PHA has no responsibility or liability to the owner or any other person for the family's behavior or suitability for tenancy. However, the PHA may opt to screen applicants for family behavior or suitability for tenancy.

(2) The PHA must conduct any such screening of applicants in accordance with policies stated in the PHA administrative plan.

(b) *Owner responsibility.* (1) The owner is responsible for screening and selection of the family to occupy the owner's unit.

(2) The owner is responsible for screening of families on the basis of their tenancy histories. An owner may consider a family's background with respect to such factors as:

(i) Payment of rent and utility bills;

(ii) Caring for a unit and premises;

(iii) Respecting the rights of other residents to the peaceful enjoyment of their housing;

(iv) Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others;

(v) Compliance with other essential conditions of tenancy; and

(vi) Other factors determined by the owner.

(c) *Providing tenant information to owner.* (1) The PHA must give the owner:

(i) The family's current and prior address (as shown in the PHA records); and

(ii) The name and address (if known to the PHA) of the landlord at the family's current and any immediately prior address.

(2) When a family wants to lease a dwelling unit, the PHA may offer the owner other information in the PHA possession about the family, including information about the tenancy history of family members or about criminal activity by family members.

(3) The PHA must give the family a statement of the PHA policy on providing information to owners. The statement must be included in the information package that is given to a family that is selected to received PBV assistance.

(4) The PHA policy must provide that the PHA will give the same types of information to all PBV families and owners.

§ 983.256 Lease.

(a) *Tenant's legal capacity.* The tenant must have legal capacity to enter a lease under state and local law. ''Legal capacity'' means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

(b) *Form of lease.* (1) The tenant and the owner must enter a written lease for the unit. The lease must be executed by the owner and the tenant.

(2) If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form, except as provided in paragraph (b)(4) of this section. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a PHA model lease.

(3) In all cases, the lease must include a HUD-required tenancy addendum. The tenancy addendum must include word-for-word all provisions required by HUD.

(4) The PHA may review the owner's lease form to determine if the lease complies with state and local law, and if not, may require the owner to revise the form to comply with state and local law.

(c) *Required information.* The lease must specify all of the following:

(1) The names of the owner and the tenant;

(2) The unit rented (address, apartment number, if any, and any other information needed to identify the leased unit);

(3) The term of the lease (initial term and any provision for renewal);

(4) The amount of the tenant rent. The tenant rent is subject to change during the term of the lease in accordance with HUD requirements.

(5) A specification of what services, maintenance, equipment, and utilities are to be provided by the owner.

(d) *Tenancy addendum.* (1) The tenancy addendum in the lease shall state:

(i) The program tenancy requirements (as specified in this part);

(ii) The composition of the household as approved by the PHA (names of family members and any PHA-approved live-in aide).

(2) All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum shall prevail over other provisions of the lease.

(e) *Changes in lease.* (1) If the tenant and the owner agree to any change in the lease, such change must be in writing, and the owner must immediately give the PHA a copy of such change.

(2) The owner must notify the PHA in advance of any proposed change in lease requirements governing the allocation of tenant and owner responsibilities for utilities. Such change may only be made if approved by the PHA and in accordance with the terms of the lease relating to its amendment. The PHA must redetermine reasonable rent based on any change in the allocation of responsibility for utilities between the owner and the tenant, and the redetermined reasonable rent shall be used in calculation of rent to owner from the effective date of the change.

(f) *Initial term of lease.* (1) Except as provided in paragraph (f)(2) of this section, the initial lease term must be for at least one year.

(2) The PHA may approve a shorter initial lease term if the PHA determines that:

(i) Such shorter term would improve housing opportunities for the tenant: and

(ii) Such shorter term is the prevailing local market practice.

(g) *Lease provisions governing tenant absence from the unit.* The lease may specify a maximum period of tenant absence from the unit that may be shorter than the maximum period permitted by PHA policy. (PHA termination of assistance actions due to family absence from the unit is subject to § 982.312 of this chapter, except that the HAP contract is not terminated if the family is absent for longer than the maximum period permitted.)

§ 983.257 Owner termination of tenancy and eviction for criminal activity or alcohol abuse.

Section 982.310 of this chapter applies with the exception that § 982.310(d)(1)(iii) and (iv) does not apply to the PBV program. (In the PBV program, ''good cause'' does not include a business or economic reason or desire to use the unit for personal, family, or a non-residential rental purpose.)

§ 983.258 Security deposit: amounts owed by tenant.

(a) The owner may collect a security deposit from the tenant.

(b) The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

(c) When the tenant moves out of the contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as payment or reimbursement for any unpaid tenant rent, damages to the unit or other amounts which the tenant owes under the lease.

(d) The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used as payment or reimbursement to the owner, the owner must promptly refund the full amount of the balance to the tenant.

(e) If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may seek to collect the balance from the tenant. However, the PHA has no liability or responsibility for payment of any amount owed by the family to the owner.

§ 983.259 Overcrowded, under-occupied, and accessible units.

(a) *Family occupancy of wrong-size or accessible unit.* The PHA subsidy standards determine the appropriate unit size for the family size and composition. If the PHA determines that a family is occupying a:

(1) Wrong-size unit, or

(2) Unit with accessibility features that the family does not require, and the unit is needed by a family that requires the accessibility features, the PHA must promptly notify the family and the owner of this determination, and of the PHA's offer of continued assistance in another unit pursuant to paragraph (b) of this section.

(b) *PHA offer of continued assistance.* (1) If a family is occupying a:

(i) Wrong-size unit, or

(ii) Unit with accessibility features that the family does not require, and the

unit is needed by a family that requires the accessibility features, the PHA must offer the family the opportunity to receive continued housing assistance in another unit.

(2) Such continued housing assistance may be in the form of:

(i) Project-based voucher assistance in an appropriate-size unit (in the same building or in another building);

(ii) Other project-based housing assistance (*e.g.*, by occupancy of a public housing unit),

(iii) Tenant-based rental assistance under the voucher program; or

(iv) Other comparable public or private tenant-based assistance (*e.g.*, under the HOME program).

(c) *PHA termination of housing assistance payments.* (1) If the PHA offers the family the opportunity to receive tenant-based rental assistance under the voucher program, the PHA must terminate the housing assistance payments for a wrong-sized or accessible unit at expiration of the term of the family's voucher (including any extension granted by the PHA).

(2) If the PHA offers the family the opportunity for another form of continued housing assistance in accordance with paragraph (b)(2) of this section (not in the tenant based voucher program), the PHA must terminate the housing assistance payments for a wrong-sized or accessible unit at the expiration of a reasonable period as determined by the PHA.

§ 983.260 Family right to move.

(a) The family may terminate the assisted lease at any time after the first year of occupancy. If the family terminates the assisted lease before the end of one year, the family relinquishes the opportunity for continued tenant-based assistance. The family must give the owner advance written notice of intent to vacate (with a copy to the PHA) in accordance with the lease.

(b) If the family has elected to terminate the lease in this manner, the PHA must offer the family the opportunity for continued tenant-based rental assistance, in the form of either assistance under the voucher program or other comparable tenant-based rental assistance.

(c) Before providing notice to terminate the lease, the family must contact the PHA to request comparable tenant-based rental assistance if the family wishes to move with continued assistance. If voucher or comparable tenant-based rental assistance is not immediately available upon termination of the family's lease of a PBV unit, the PHA must give the family priority to receive the next available opportunity for continued tenant-based rental assistance.

§ 983.261 When occupancy may exceed 25 percent cap on the number of PBV units in each building.

(a) Except as provided in § 983.56(b), the PHA may not pay housing assistance under the HAP contract for contract units in excess of the 25 percent cap pursuant to § 983.56(a).

(b) In referring families to the owner for admission to excepted units, the PHA must give preference to elderly or disabled families; or to families receiving supportive services under a voucher, project-based certificate, or public housing family self-sufficiency (FSS) program; or to families who are in compliance with their FSS contract of participation at the beginning of the assisted unit lease term, for occupancy of the number of contract units set aside for occupancy by such families.

(c) A family (or the remaining members of the family) residing in an excepted unit that no longer meets the criteria for a ''qualifying family'' in connection with the 25 percent per building cap exception (*e.g.*, a family violating its contract of participation or the remaining members of a family that no longer qualifies for elderly or disabled family status) must vacate the unit within a reasonable period of time established by the PHA. A family otherwise in compliance with its family obligations will be provided a tenant-based voucher or comparable rental assistance in accordance with § 983.260 to move from the excepted unit. Alternatively, if the project is partially assisted, the family need not move if it is possible for the HAP contract to be amended to substitute a different unit in the building in accordance with § 983.206(a). The assistance for a family residing in an excepted unit that is not in compliance with its family obligations (*e.g.*, a family violating its FSS contract of participation) may be terminated by the PHA.

Subpart G—Rent to Owner

§ 983.301 Determining the rent to owner.

(a) *Initial and redetermined rent.* (1) The amount of the initial and redetermined rent to owner is determined in accordance with this section and § 983.302.

(2) The amount of the initial rent to owner is established at the beginning of the HAP contract term. For rehabilitated or newly constructed housing, the Agreement states the estimated amount of the initial rent to owner, but the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

(3) The rent to owner is redetermined annually on each contract anniversary in accordance with this section and § 983.302.

(b) *Amount of rent to owner.* Except for certain tax credit units as provided in paragraph (c) of this section, the rent to owner must not exceed the lowest of:

(1) The payment standard amount for the unit bedroom size minus any utility allowance;

(2) The reasonable rent; or

(3) The rent requested by the owner.

(c) *Rent to owner for certain tax credit units.* (1) This paragraph (c) applies if:

(i) A contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1968 (see 26 U.S.C. 42); and

(ii) The contract unit is not located in a qualified census tract; and

(iii) In the same building, there are comparable tax credit units of the same unit bedroom size as the contract unit and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and

(iv) The tax credit rent exceeds the payment standard amount for the unit bedroom size (as specified in the payment standard schedule for the PHA's tenant-based voucher program.);

(2) In the case of a contract unit described in paragraph (c)(1) of this section, the rent to owner must not exceed the lowest of:

(i) The tax credit rent minus any utility allowance;

(ii) The reasonable rent; or

(iii) The rent requested by the owner.

(3) The ''tax credit rent'' is the rent charged for comparable units of the same bedroom size in the building that also receive the low-income housing tax credit but do not have any additional rental assistance (*e.g.*, additional assistance such as tenant-based voucher assistance).

(4) A ''qualified census tract'' is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which:

(i) At least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI); or

(ii) Where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

(d) *Rent to owner for other tax credit units.* Except in the case of a tax credit unit described in paragraph (c)(1) of this section, the rent to owner for all other tax credit units is determined pursuant to paragraph (b) of this section.

(e) *Reasonable rent.* The PHA shall determine reasonable rent in accordance with § 983.303. The rent to owner for

each contract unit may at no time exceed the reasonable rent.

(f) *Use of payment standard amount and utility allowance schedule in determining amount of rent to owner.* (1) *Amounts used.* (i) *Determination of initial rent (at beginning of HAP contract term).* When determining the initial rent to owner, the PHA shall use the payment standard amount on the PHA payment standard schedule and the utility allowance schedule in effect at execution of the HAP contract. At its discretion, the PHA may use the amounts in effect at any time during the 30 day period immediately before the beginning date of the HAP contract.

(ii) *Redetermination of rent to owner (at annual anniversary).* When redetermining the rent to owner at the annual anniversary date of the HAP contract, the PHA shall use the payment standard amount on the PHA payment standard schedule and the utility allowance schedule in effect at the annual anniversary date of the HAP contract. At its discretion, the PHA may use the amounts in effect at any time during the 30 day period immediately before the annual anniversary date of the HAP contract.

(2) *Payment standard schedule and PHA utility allowance schedule.* (i) The PHA may not establish or apply different payment standard amounts for the project-based voucher program. The same PHA payment standard schedule applies to both the tenant-based and project-based voucher programs. Any HUD-approved exception payment standard amount under § 982.503(c) of this chapter applies to both the tenant-based and project-based voucher programs. HUD will not approve a different exception payment standard amount for use in the project-based voucher program.

(ii) The PHA may not establish or apply different utility allowance amounts for the project-based voucher program. The same PHA utility allowance schedule applies to both the tenant-based and project-based voucher programs.

(g) *PHA-owned units.* For PHA-owned PBV units, the initial rent to owner and the annual redeterminations at the annual anniversary of the HAP contract are determined by the independent entity approved by HUD in accordance with § 983.59. The PHA must use the rent to owner determined by the independent entity.

§ 983.302 Annual redetermination of rent to owner.

(a) *Review prior to annual anniversary.* The PHA must redetermine the rent to owner at the annual anniversary of the HAP contract in accordance with § 983.301. The PHA must review the rent to owner before the annual anniversary of the HAP contract to determine whether the rent to owner must be increased, decreased, or left unchanged on the annual anniversary.

(b) *Rent increase.* (1) The PHA may not make any rent increase other than an increase in the rent to owner as determined at the annual redetermination pursuant to § 983.301. (Provisions for special adjustments of contract rent pursuant to 42 U.S.C. 1437f(b)(2)(B) do not apply to the voucher program.)

(2) The owner must request any increase in the rent to owner at the annual anniversary of the HAP contract by written notice to the PHA. The length of the required notice period of the owner request for a rent increase at the annual anniversary may be established by the PHA. The request must be submitted in the form and manner required by the PHA.

(3) The PHA may not approve and the owner may not receive any increase of rent to owner until and unless the owner has complied with all requirements of the HAP contract, including compliance with the HQS. The owner may not receive any retroactive increase of rent for any period of noncompliance.

(c) *Rent decrease.* If there is a decrease in the rent to owner, as established at the annual anniversary in accordance with § 983.301, the rent to owner must be decreased, regardless of whether the owner requested a rent adjustment.

(d) *Notice of annual rent redetermination.* Rent to owner is redetermined by written notice by the PHA to the owner specifying the amount of the redetermined rent (as determined in accordance with §§ 983.301 and 983.302). The PHA notice of the annual adjustment constitutes an amendment of the rent to owner specified in the HAP contract.

(e) *Contract year and annual anniversary of the HAP contract.* (1) The contract year is the period of twelve calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

(2) The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year. The adjusted rent to owner amount applies for the period of twelve calendar months from the annual anniversary of the HAP contract.

(3) See § 983.206(c) for information on the annual anniversary of the HAP contract for contract units completed in stages.

§ 983.303 Reasonable rent.

(a) *Comparability requirement.* At all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent as determined by the PHA.

(b) *Redetermination.* The PHA must redetermine the reasonable rent:

(1) At least annually;

(2) Whenever there is a five percent decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR in effect one year before the contract anniversary;

(3) Whenever the PHA approves a change in the allocation of responsibility for utilities between the owner and the tenant;

(4) Whenever the HAP contract is amended to substitute a different contract unit in the same building; and

(5) Whenever there is any other change that may substantially affect the reasonable rent.

(c) *How to determine reasonable rent.* (1) The reasonable rent of a contract unit must be determined by comparison to rent for other comparable unassisted units.

(2) In determining the reasonable rent, the PHA must consider factors that affect market rent, such as:

(i) The location, quality, size, unit type, and age of the contract unit; and

(ii) Amenities, housing services, maintenance, and utilities to be provided by the owner.

(d) *Comparability analysis.* (1) For each unit type, the PHA comparability analysis must use at least three comparable units in the private unassisted market, which may include comparable unassisted units in the premises or project.

(2) The PHA must retain a comparability analysis that shows how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units.

(3) The comparability analysis may be performed by PHA staff or by another qualified person or entity. A person or entity that conducts the comparability analysis and any PHA staff or contractor engaged in determining the housing assistance payment based on the comparability analysis may not have any direct or indirect interest in the property.

(e) *Owner certification of comparability.* By accepting each

monthly housing assistance payment from the PHA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner must give the PHA information requested by the PHA on rents charged by the owner for other units in the premises or elsewhere.

(f) *Determining reasonable rent for PHA-owned units.* (1) For PHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with § 983.58, rather than by the PHA. Reasonable rent must be determined in accordance with this section.

(2) The independent entity must furnish a copy of the independent entity determination of reasonable rent for PHA-owned units to the PHA and to the HUD field office where the project is located.

§ 983.304 Other subsidy: effect on rent to owner.

In addition to the rent limits established in accordance with § 983.301 and § 982.302 of this chapter, the following restrictions apply to certain units.

(a) *HOME.* For units assisted under the HOME program, rents may not exceed rent limits as required by the HOME program (24 CFR 92.252).

(b) *Subsidized projects.* (1) This subsection applies to any contract units in any of the following types of federally subsidized project:

(i) An insured or non-insured Section 236 project;

(ii) A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;

(iii) A Section 221(d)(3) below market interest rate (BMIR) project;

(iv) A Section 515 project of the Rural Housing Service;

(v) Any other type of federally subsidized project specified by HUD.

(2) The rent to owner may not exceed the subsidized rent (basic rent) as determined in accordance with requirements for the applicable federal program listed in paragraph (b)(1) of this section.

(c) *Combining subsidy.* Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements. *See* § 983.55.

(d) *Other subsidy: PHA discretion to reduce rent.* At its discretion, a PHA may reduce the initial rent to owner because of other governmental subsidies, including tax credit or tax exemption, grants, or other subsidized financing.

(e) *Prohibition of other subsidy.* For provisions that prohibit PBV assistance to units in certain types of subsidized housing, *see* § 983.54.

§ 983.305 Rent to owner: effect of rent control and other rent limits.

In addition to the rent reasonableness limit and other rent limits under this rule, the amount of rent to owner also may be subject to rent control or other limits under local, State, or Federal law.

Subpart H—Payment to Owner

§ 983.351 PHA payment to owner for occupied unit.

(a) *When payments are made.* (1) During the term of the HAP contract, the PHA shall make housing assistance payments to the owner in accordance with the terms of the HAP contract. The payments shall be made for the months during which a contract unit is leased to and actually occupied by an eligible family.

(2) Except for discretionary vacancy payments in accordance with § 983.352, the PHA may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

(b) *Monthly payment.* Each month, the PHA shall make a housing assistance payment to the owner for each contract unit that complies with the HQS and is leased to and occupied by an eligible family in accordance with the HAP contract.

(c) *Calculating amount of payment.* The monthly housing assistance payment by the PHA to the owner for a contract unit leased to a family is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

(d) *Prompt payment.* The housing assistance payment by the PHA to the owner under the HAP contract must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and the PHA agree on a later date.

(e) *Owner compliance with contract.* To receive housing assistance payments in accordance with the HAP contract, the owner must comply with all the provisions of the HAP contract. Unless the owner complies with all the provision of the HAP contract, the owner does not have a right to receive housing assistance payments.

§ 983.352 Vacancy payment.

(a) *Payment for move-out month.* If an assisted family moves out of the unit, the owner may keep the housing assistance payment payable for the calendar month when the family moves out (''move-out month''). However, the owner may not keep the payment if the PHA determines that the vacancy is the owner's fault.

(b) *Vacancy payment at PHA discretion.* (1) At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner (in the amounts determined in accordance with paragraph (b)(2) of this section) for a PHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month.

(2) The vacancy payment to the owner for each month of the maximum two month period will be determined by the PHA, and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit). Any vacancy payment may only cover the period the unit remains vacant.

(3) The PHA may only make vacancy payments to the owner if:

(i) The owner gives the PHA prompt, written notice certifying that the family has vacated the unit and the date when the family moved out (to the best of the owner's knowledge and belief);

(ii) The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;

(iii) The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and

(iv) The owner provides any additional information required and requested by the PHA to verify that the owner is entitled to the vacancy payment.

(4) The owner must submit a request for vacancy payments in the form and manner required by the PHA and must provide any information or substantiation required by the PHA to determine the amount of any vacancy payment.

§ 983.353 Tenant rent; payment to owner.

(a) *PHA determination.* (1) The tenant rent is the portion of the rent to owner paid by the family. The PHA determines the tenant rent in accordance with HUD requirements.

(2) Any changes in the amount of the tenant rent will be effective on the date stated in a notice by the PHA to the family and the owner.

(b) *Tenant payment to owner.* (1) The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance).

(2) The amount of the tenant rent as determined by the PHA is the maximum

amount the owner may charge the family for rent of a contract unit. The tenant rent is payment for all housing services, maintenance, equipment, and utilities to be provided by the owner without charge to the tenant, in accordance with the HAP contract and lease.

(3) The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the PHA. The owner must immediately return any excess payment to the tenant.

(4) The family is not responsible for payment of the portion of the rent to owner covered by the housing assistance payment under the HAP contract. The owner may not terminate the tenancy of an assisted family for nonpayment of the PHA housing assistance payment.

(c) *Limit of PHA responsibility.* (1) The PHA is only responsible for making housing assistance payments to the owner on behalf of a family in accordance with the HAP contract. The PHA is not responsible for paying the tenant rent, or for paying any other claim by the owner.

(2) The PHA may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the tenant rent or to pay any other claim by the owner. The PHA may not make any payment to the owner for any damage to the unit, or for any other amount owed by a family under the family's lease or otherwise.

(d) *Utility reimbursement.* (1) If the amount of the utility allowance exceeds the total tenant payment, the PHA shall pay the amount of such excess as a reimbursement for tenant-paid utilities (''utility reimbursement'') and the tenant rent to the owner shall be zero.

(2) The PHA either may pay the utility reimbursement to the family or may pay the utility bill directly to the utility supplier on behalf of the family.

(3) If the PHA chooses to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

§ 983.354 Other fees and charges.

(a) *Meals and supportive services.* (1) Charges for meals or supportive services may not be included in the rent to owner. The value of meals and supportive services may not be included in the calculation of reasonable rent.

(2) Except for assisted living, the owner may not require the tenant or family members to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

(b) *Other charges by owner.* The owner may not charge the tenant or family members extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

Dated: February 17, 2004.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

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Consolidated return regulations—
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Genetically engineered organisms; importation, interstate movement, and environmental release; comments due by 3-23-04; published 1-23-04 [FR 04-01411]
Plant-related quarantine, domestic:
Oriental Fruit Fly; comments due by 3-22-04; published 1-20-04 [FR 04-01067]

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Forest Service
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Fish and shellfish; subsistence taking; comments due by 3-26-04; published 2-3-04 [FR 04-02098]

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Foster Grandparent Progam; amendments; comments due by 3-26-04; published 2-10-04 [FR 04-02801]
Retired Senior Volunteer Program; amendments; comments due by 3-26-04; published 2-10-04 [FR 04-02803]
Senior Companion Program; amendments; comments due by 3-26-04; published 2-10-04 [FR 04-02802]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA
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Definitions clause; comments due by 3-22-04; published 1-21-04 [FR 04-01152]

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Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]
Natural Gas Policy Act:
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National priorities list update; comments due by 3-22-04; published 2-20-04 [FR 04-03599]
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 3-22-04; published 2-20-04 [FR 04-03598]
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National priorities list update; comments due by 3-25-04; published 2-24-04 [FR 04-03824]

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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.

S. 2136/P.L. 108–207

To extend the final report date and termination date of the National Commission on Terrorist Attacks Upon the United States, to provide additional funding for the Commission, and for other purposes. (Mar. 16, 2004; 118 Stat. 556)

Last List March 17, 2004

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