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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM274, Special Conditions No. 25–257–SC]

Special Conditions: Boeing Model 727–100/–200 Series Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Boeing Model 727–100/–200 series airplanes modified by Aircraft Systems and Manufacturing. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of a Collins Horizontal Situation Indicator (HSI) that performs critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of this system from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is March 5, 2004. Comments must be received on or before April 19, 2004.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM274, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM274.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m., and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On October 23, 2003, Aircraft Systems & Manufacturing, Georgetown, Texas, applied to the FAA, Fort Worth Special Certification Office, for a supplemental type certificate (STC) to modify Boeing Model 727–100–/–200 series airplanes. These models are currently approved under Type Certificate No. A3WE. The Model 727–100/–200 series airplanes are low wing, pressurized transport category airplanes with three fuselage-mounted engines. The modification incorporates the installation of a Collins Horizontal Situation Indicator (HSI). The information presented is flight critical. The avionics/electronics and electrical systems installed in these airplanes have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Aircraft Systems & Manufacturing must show that the Model 727–100/–200 series airplanes as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A3WE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.''

The regulations incorporated by reference in Type Certificate No. A3WE include Civil Air Regulations (CAR) 4b, as amended by amendment 4b–1 through 4b–11 and additional requirements identified in the type certificate data sheet that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, CAR 4b, as amended) do not contain adequate or appropriate safety standards for the modified Boeing Model 727–100/–200 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 727–100/–200 series airplanes must comply with the fuel vent and exhaust emission

requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Aircraft Systems & Manufacturing apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A3WE to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

As noted earlier, the modified Boeing Model 727–100 / –200 series airplanes will incorporate a new avionics/electronics and electrical system that will perform critical functions. This system may be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Boeing Model 727–100 / –200 series airplanes modified by Aircraft Systems & Manufacturing. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, and the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 727–100 / –200 series airplanes modified by Aircraft Systems & Manufacturing. Should Aircraft Systems & Manufacturing apply at a later date for a supplemental type certificate to modify any other model on Type Certificate A3WE to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to that model as well as under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on Boeing Model 727–100 / –200 series airplanes modified by Aircraft Systems &

Manufacturing. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Boeing Model 727–100/–200 series airplanes modified by Aircraft Systems & Manufacturing.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions*: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on March 5, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–6150 Filed 3–18–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30408; Amdt. No. 3092]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective March 19, 2004. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 19, 2004.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of the **Federal Register**, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: PO Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the

remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on March 12, 2004.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective April 15, 2004*

San Francisco, CA, San Francisco Intl, LDA/DME RWY 28R, Orig
Oxford, CT, Waterbury-Oxford, NDB RWY 18, Amdt 6
Oxford, CT, Waterbury-Oxford, NDB RWY 36, Amdt 9
Oxford, CT, Waterbury-Oxford, VOR/DME RNAV RWY 18, Amdt 6, CANCELLED
Oxford, CT, Waterbury-Oxford, ILS OR LOC RWY 36, Amdt 13
Oxford, CT, Waterbury-Oxford, RNAV (GPS) RWY 18, Orig
Oxford, CT, Waterbury-Oxford, GPS RWY 18, Orig-A, CANCELLED
Oxford, CT, Waterbury-Oxford, RNAV (GPS) RWY 36, Orig
Oxford, CT, Waterbury-Oxford, GPS RWY 36, Orig-B, CANCELLED
Miami, FL, Miami Intl, LOC/DME RWY 8L, Orig-A
Miami, FL, Miami Intl, LOC/DME RWY 26R, Orig-A
Miami, FL, Miami Intl, NDB RWY 27, Amdt 20A
Miami, FL, Miami Intl, ILS OR LOC RWY 8R, Amdt 29B
Miami, FL, Miami Intl, ILS OR LOC RWY 9, Amdt 9A
Miami, FL, Miami Intl, ILS OR LOC RWY 26L, Amdt 14C
Miami, FL, Miami Intl, ILS OR LOC RWY 27, Amdt 23C
Miami, FL, Miami Intl, RNAV (GPS) RWY 8L, Orig-A
Miami, FL, Miami Intl, RNAV (GPS) RWY 8R, Orig-C
Miami, FL, Miami Intl, RNAV (GPS) RWY 9, Orig-C
Miami, FL, Miami Intl, RNAV (GPS) RWY 26L, Orig-C
Miami, FL, Miami Intl, RNAV (GPS) RWY 26R, Orig-A
Miami, FL, Miami Intl, RNAV (GPS) RWY 27, Orig-C
Orlando, FL, Orlando Intl, VOR RWY 18L, Amdt 3C
Orlando, FL, Orlando Intl, VOR RWY 18R, Amdt 3C
Orlando, FL, Orlando Intl, VOR/DME RWY 18L, Amdt 5D
Orlando, FL, Orlando Intl, VOR/DME RWY 18R, Amdt 5D
Orlando, FL, Orlando Intl, VOR/DME RWY 36L, Amdt 5A
Orlando, FL, Orlando Intl, VOR/DME RWY 36R, Amdt 10A
Orlando, FL, Orlando Intl, ILS OR LOC RWY 17L, Orig-A, ILS RWY 17L (CAT II), Orig-A
Orlando, FL, Orlando Intl, ILS OR LOC RWY 17R, Amdt 4A, ILS RWY 17R (CAT II), Amdt 4A
Orlando, FL, Orlando Intl, ILS OR LOC RWY 18R, Amdt 6B
Orlando, FL, Orlando Intl, ILS OR LOC RWY 35L, Amdt 5A, ILS RWY 35L (CAT II/III), Amdt 5A
Orlando, FL, Orlando Intl, ILS OR LOC RWY 35R, Orig-A, ILS RWY 35R (CAT II), Orig-A
Orlando, FL, Orlando Intl, ILS OR LOC RWY 36R, Amdt 7B, ILS RWY 36R (CAT II/III), Amdt 7B
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 17L, Orig-A
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 17R, Orig-B
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 18L, Orig-A
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 18R, Orig-A
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 35L, Orig-B
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 35R, Orig-A
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 36L, Orig-A
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 36R, Orig-A
Prentiss, MS, Prentiss-Jefferson Davis County, NDB OR GPS RWY 30, Orig-A, CANCELLED
Prentiss, MS, Prentiss-Jefferson Davis County, RNAV (GPS) RWY 30, Orig
Tunica, MS, Tunica Muni, RNAV (GPS) RWY 35, Orig
Manchester, NH, Manchester, ILS OR LOC/DME RWY 17, Orig
Manchester, NH, Manchester, ILS RWY 17, Amdt 2A, CANCELLED
Charlotte, NC, Charlotte/Douglas Intl, ILS OR LOC RWY 5, Amdt 37
Charlotte, NC, Charlotte/Douglas Intl, ILS OR LOC RWY 18L, Amdt 6
Charlotte, NC, Charlotte/Douglas Intl, ILS OR LOC RWY 18R, Amdt 9
Charlotte, NC, Charlotte/Douglas Intl, ILS OR LOC RWY 36L (CAT II/III), Amdt 15
Charlotte, NC, Charlotte/Douglas Intl, ILS OR LOC RWY 36R (CAT II/III), Amdt 10
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) RWY 5, Amdt 1
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) RWY 18L, Amdt 1
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) RWY 18R, Amdt 1
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) RWY 36L, Amdt 1
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) RWY 36R, Amdt 1
Akron, OH, Akron-Canton Regional, ILS OR LOC RWY 19, Amdt 7
Cleveland, OH, Cleveland-Hopkins Intl, ILS OR LOC/DME RWY 24R, Amdt 1
Newark, OH, Newark-Heath, LOC RWY 9, Orig
Philadelphia, PA, Philadelphia Intl, Converging ILS RWY 17, Amdt 4
Tooele, UT, Bolinder Field-Tooele Valley, NDB RWY 17, Amdt 1
Stafford, VA, Stafford Regional, VOR RWY 33, Amdt 1
Stafford, VA, Stafford Regional, ILS OR LOC RWY 33, Orig

** * * Effective May 13, 2004*

Waco, TX, Waco Regional, ILS OR LOC RWY 19, Amdt 15B

** * * Effective June 10, 2004*

Pinckneyville, IL, Pinckneyville-Du Quoin, NDB–A, Orig, CANCELLED
Pinckneyville, IL, Pinckneyville-Du Quoin, GPS RWY 18, Orig, CANCELLED
Pinckneyville, IL, Pinckneyville-Du Quoin, GPS RWY 36, Orig, CANCELLED
Highgate, VT, Franklin County State, VOR/DME RWY 19, Amdt 4
Highgate, VT, Franklin County State, RNAV (GPS) RWY 1, Amdt 1

Highgate, VT, Franklin County State, RNAV (GPS) RWY 19, Orig
Madison, WI, Dane County Regional-Truax Field, VOR/DME OR TACAN RWY 18, Amdt 1
Douglas, WY, Converse County, VOR RWY 29, Amdt 1
Douglas, WY, Converse County, RNAV (GPS) RWY 29, Orig

The FAA published an Amendment in Docket No. 30404, Amdt No. 3089 to Part 97 of the Federal Aviation Regulations (Vol 69, FR No. 25, page 5685; dated February 6, 2004) under Section 97.33 effective 15 April 2004, which is hereby rescinded:

Platinum, AK, Platinum, RNAV (GPS) RWY 13, Orig
Platinum, AK, Platinum, GPS RWY 13, Orig, CANCELLED

The FAA published an Amendment in Docket No. 30406, Amdt No. 3091 to Part 97 of the Federal Aviation Regulations (Vol 69, FR No. 45, Page 10615; dated March 8, 2004) under Section 97.33 effective 15 April 2004, which is hereby rescinded:

Los Alamos, NM, Los Alamos, RNAV (GPS) RWY 27, Orig

The FAA published an Amendment in Docket No. 30406, Amdt No. 3091 to Part 97 of the Federal Aviation Regulations (Vol 69, FR No. 45, Page 10614; dated March 8, 2004) under Section 97.33 effective 13 May 2004, which is hereby rescinded:

Madison, WI, Dane County Regional-Truax Field, VOR/DME OR TACAN RWY 18, Amdt 1

[FR Doc. 04–6146 Filed 3–18–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 299

RIN 0790–AG96

National Security Agency/Central Security Service (NSA/CSS) Freedom of Information Act Program

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This part implements the Freedom of Information Act, as amended. It assigns responsibility for responding to written requests made pursuant to the Act and provides for the review required to determine the appropriateness of classification.

On May 23, 2003 (68 FR 28132), the Department of Defense published an interim final rule with a request for comments. No comments were received. This final rule adopts the interim final rule as written with no changes.

DATES: This rule is effective March 19, 2004.

FOR FURTHER INFORMATION CONTACT: Pamela Phillips, 301–688–6527.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

It has been determined that 32 CFR part 299 is not a significant regulatory action. The rule does not (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; or (4) raise novel legal or policy issues arising of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Unfunded Mandates Reform Act

It has been certified that 32 CFR part 299 does not contain a Federal Mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million of more in any one year.

Regulatory Flexibility Act

It has been determined that this rule is not subject to the Regulatory Flexbility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

It has been certified that 32 CFR part 299 does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 44).

Executive Order 13132

It has been certified that 32 CFR part 299 does not have federalism implications, as set forth in Executive Order 13132.

Dated: February 27, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–6183 Filed 3–18–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

42 CFR Part 71

Foreign Quarantine

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Amendment of February 4, 2004, order to lift the embargo of birds and bird products from the Hong Kong Special Administrative Region (Hong Kong).

SUMMARY: On February 4, 2004, final rule published in the **Federal Register** on February 13, 2004 (69 FR 7165), the Centers for Disease Control and Prevention (CDC) issued an order immediately banning the import of all birds (Class: Aves) from specified Southeast Asian countries, subject to limited exemptions for pet birds and certain bird-derived products. CDC took this step because birds from these affected countries potentially can infect humans with avian influenza (Influenza A [(H5N1]). The February 4 order complemented a similar action taken by the U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS). CDC and APHIS are now lifting the embargo of birds and bird products from Hong Kong because of the documented public health and animal health measures taken by Hong Kong officials to prevent spread of the outbreak within Hong Kong and the lack of avian influenza cases in Hong Kong's domestic and wild bird populations. All other portions of the February 4, 2004 order remain in effect until further notice.

DATES: This action is effective on March 10, 2004 and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Paul Arguin, National Center for Infectious Diseases, centers for Disease Control Prevention, Mailstop C–14, 1600 Clifton Rd., Atlanta, GA 30330, telephone, 404–498–1600.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 2004, a single peregrine falcon was found dead near a residential development in Hong Kong. The bird carcass was submitted to public health authorities and was found to be positive for Influenza A (H5N1) by laboratory tests. On January 26, 2004, the Office of International Epizootics, an international organization that reports

the occurrence of animal diseases detected worldwide, listed Hong Kong among the countries in which an outbreak of avian influenza was occurring. CDC and APHIS subsequently issued embargoes of birds and bird products imported from these countries, including Hong Kong.

The Hong Kong Health, Welfare, and Food Bureau provided information to CDC and APHIS documenting their avian influenza surveillance and prevention and control measures. According to the Secretary for Health, Welfare, and Food, on January 30, 2004, Hong Kong suspended importation of all live birds from countries affected by the outbreak. Hong Kong also has imposed a vaccination, inspection, and surveillance program for poultry farms, live poultry markets, and pet bird dealers; implemented measures to prevent spread of the virus through human traffic across the border; and required local poultry farms to implement strict biosecurity programs. In addition, according to the Secretary for Health, Welfare, and Food, there have been no additional cases of Influenza A (H5N1) in birds in Hong Kong since the positive peregrine falcon.

Given the documented absence of Influenza A (H5N1) in infected birds in Hong Kong and the strict control measures in place in Hong Kong to guard against new introduction of avian influenza, CDC is lifting the embargo of birds and bird products imported from Hong Kong. APHIS-imposed disease control measures, including a 30-day quarantine, are not affected by this order and will remain in place as directed by APHIS.

Immediate Action

Therefore, pursuant to 42 CFR 71.32(b), the February 4, 2004 order is amended to lift the embargo of birds and products derived from birds (including hatching eggs) imported from Hong Kong by removing Hong Kong from the list of countries subject to the order. All other portions of the February 4, 2004 order shall remain in effect until further notice. The February 4, 2004 order may be further amended as necessary as the situation develops, for example, to add or remove more countries subject to the embargo.

Dated: March 11, 2004.

Julie Louise Gerberding,

Director, Centers for Disease Control and Prevention.

[FR Doc. 04–6205 Filed 3–18–04; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Mitigation Division, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: Federal Emergency Management Agency makes the final determinations listed below of the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified BFEs determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implication under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable

standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and Recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and Case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Gila (FEMA Docket No.: B–7438).	City of Globe (03–09–0187P).	June 18, 2003, June 25, 2003, Arizona Silver Belt.	The Honorable Stanley Gibson, Mayor, City of Globe, 150 North Pine Street, Globe, Arizona 85501.	September 24, 2003	040029
Gila (FEMA Docket No.: B–7438).	Unincorporated Areas (03–09–0187P).	June 18, 2003, June 25, 2003, Arizona Silver Belt.	The Honorable Cruz Salas, Chairman, Gila County Board of Supervisors, 1400 East Ash Street, Globe, Arizona 85501.	September 24, 2003 ..	040028
Maricopa (FEMA Docket No.: B–7438).	City of Avondale (02–09–190P).	May 29, 2003, June 5, 2003, Arizona Republic.	The Honorable Ronald J. Drake, Mayor, City of Avondale, 325 North Central Avenue, Avondale, Arizona 85323.	May 22, 2003	040038
Maricopa (FEMA Docket No.: B–7438).	Town of Buckeye (03–09–0245P).	June 19, 2003, June 26, 2003, Arizona Republic.	The Honorable Dusty Hull, Mayor, Town of Buckeye, 100 North Apache Road, Suite A, Buckeye, Arizona 85326.	May 22, 2003	040039
Maricopa (FEMA Docket No.: B–7438).	City of Chandler (03–09–0353P).	May 29, 2003, June 5, 2003, Arizona Business Gazette.	The Honorable Boyd Dunn, Mayor, City of Chandler, 55 North Arizona Place, Suite 301, Chandler, Arizona 85225.	May 7, 2003	040040
Maricopa (FEMA Docket No.: B–7438).	City of El Mirage (02–09–945P).	May 22, 2003, May 29, 2003, Arizona Republic.	The Honorable Robert Robles, Mayor, City of El Mirage, P.O. Box 26, El Mirage, Arizona 85335.	August 28, 2003	040041
Maricopa (FEMA Docket No.: B–7438).	Town of Gila Bend (02–09–858P).	July 3, 2003, July 10, 2003, Arizona Business Gazette.	The Honorable Chuck Turner, Mayor, Town of Gila Bend, P.O. Box A, Gila Bend, Arizona 85337.	October 9, 2003	040043
Maricopa (FEMA Docket No.: B–7438).	City of Phoenix (03–09–0290P).	June 12, 2003, June 19, 2003, Arizona Business Gazette.	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003–1611.	May 29, 2003	040051
Maricopa (FEMA Docket No.: B–7438).	City of Surprise (02–09–945P).	May 22, 2003, May 29, 2003, Arizona Republic.	The Honorable Joan H. Shafer, Mayor, City of Surprise, 12425 West Bell Road, Suite D-100, Surprise, Arizona 85374.	August 28, 2003	040053
Maricopa (FEMA Docket No.: B–7438).	Unincorporated Areas (02–09–945P).	May 22, 2003, May 29, 2003, Arizona Republic.	The Honorable R. Fulton Brock, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	August 28, 2003	040037
Maricopa (FEMA Docket No.: B–7438).	Unincorporated Areas (02–09–858P).	July 3, 2003, July 10, 2003, Arizona Business Gazette.	The Honorable Don Stapley, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	October 9, 2003	040037
Maricopa (FEMA Docket No.: B–7438).	Town of Youngtown (03–09–1014X).	May 22, 2003, May 29, 2003, Arizona Republic.	The Honorable Bryan Hackbarth, Mayor, Town of Youngtown, 12030 Clubhouse Square, Youngtown, Arizona 85363.	August 28, 2003	040057
Pima (FEMA Docket No.: B–7438).	City of Tucson (02–09–873P).	July 17, 2003, July 24, 2003, Daily Territorial.	The Honorable Bob Walkup, Mayor, City of Tucson, City Hall, 255 West Alameda Street, Tucson, Arizona 85701.	October 23, 2003	040076
Pima (FEMA Docket No.: B–7438).	Unincorporated Areas (03–09–0541P).	June 19, 2003, June 26, 2003, Arizona Daily Star.	The Honorable Ray Carroll Republican County Supervisor, Pima County District Four, 130 West Congress Street, 11th Floor, Tucson, Arizona 85701.	September 25, 2003 ..	040073
California:					

State and county	Location and Case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Contra Costa (FEMA Docket No.: B–7438).	City of Clayton (03–09–0387P).	May 29, 2003, June 5, 2003, *Contra Costa Times*.	The Honorable Gregory J. Manning, Mayor, City of Clayton, City Hall, 6000 Heritage Trail, Clayton, California 94517.	May 9, 2003	060027
Los Angeles (FEMA Docket No.: B–7438).	Unincorporated Areas (02–09–404P).	May 22, 2003, May 29, 2003, *Los Angeles Times*.	The Honorable Yvonne B. Burke, Chair, Los Angeles County Board of Supervisors, 500 West Temple Street, Los Angeles, California 90012.	April 21, 2003	065043
Placer (FEMA Docket No.: B–7438).	City of Rocklin (02–09–810P).	May 7, 2003, May 14, 2003, *The Rocklin*.	The Honorable Kathy Lund, Mayor, City of Rocklin, 3970 Rocklin Road, Rocklin, California 95677–2720.	August 13, 2003	060242
Placer (FEMA Docket No.: B–7438).	Unincorporated Areas (02–09–810P).	May 7, 2003, May 14, 2003, *The Rocklin*.	The Honorable Rex Bloomfield, Chairman, Placer County Board of Supervisors, 175 Fulweiler Avenue, Auburn, California 95603.	August 13, 2003	060239
Sacramento (FEMA Docket No.: B–7438).	Unincorporated Areas (03–09–0080P).	May 8, 2003, May 15, 2003, *Daily Recorder*.	The Honorable Illa Collin, Chair, Sacramento County Board of Supervisors, 700 H Street, Room 2450, Sacramento, California 95814.	August 14, 2003	060262
San Diego (FEMA Docket No.: B–7438).	City of San Diego (03–09–0578P).	June 26, 2003, July 3, 2003, *San Diego Union-Tribune*.	The Honorable Richard M. Murphy, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101.	June 9, 2003	060295
San Diego (FEMA Docket No.: B–7438).	City of San Marcos (03–09–0123P).	April 24, 2003, May 1, 2003, *The Paper*.	The Honorable F. H. "Corky" Smith, Mayor, City of San Marcos, One Civic Center Drive, San Marcos, California 92069–2949.	July 31, 2003	060296
Santa Barbara (FEMA Docket No.: B–7438).	City of Solvang (02–09–1302P).	May 29, 2003, June 5, 2003, *Santa Barbara News Press*.	The Honorable Beverly Russ, Mayor, City of Solvang, P.O. Box 107, Solvang, California 93464–0107.	May 7, 2003	060756
Santa Barbara (FEMA Docket No.: B–7438).	Unincorporated Areas (02–09–179P).	July 3, 2003, July 10, 2003, *Santa Barbara News Press*.	The Honorable Naomi Schwartz, Chair, Santa Barbara County Board of Supervisors, 105 East Anapamu Street, Santa Barbara, California 93101.	October 9, 2003	060331
Santa Cruz (FEMA Docket No.: B–7438).	Unincorporated Areas (03–09–0475P).	May 8, 2003, May 15, 2003, *Register-Pajaronian*.	The Honorable Ellen Pirie, Chair, Santa Cruz County Board of Supervisors, 701 Ocean Street, Room 500, Santa Cruz, California 95060.	August 14, 2003	060353
Santa Cruz (FEMA Docket No.: B–7438).	City of Watsonville (03–09–0475P).	May 8, 2003, May 15, 2003, *Register-Pajaronian*.	The Honorable Richard de la Paz, Jr., Mayor, City of Watsonville, Administration Building, Second Foor 215 Union Street, Watsonville, California 95076.	August 14, 2003	060357
Colorado					
Adams (FEMA Docket No.: B–7438).	Unincorporated Areas (03–08–0104P).	May 14, 2003, May 21, 2003, *Brighton Standard-Blade*.	The Honorable Elaine T. Valente, Chairman, Adams County Board of Commissioners, 450 South Fourth Avenue, Brighton, Colorado 80601.	August 20, 2003	080001
Arapahoe (FEMA Docket No.: B–7438).	City of Littleton (03–08–0030P).	May 22, 2003, May 29, 2003, *Littleton Independent*.	The Honorable Susan M. Thornton, Mayor, City of Littleton, 2255 West Berry Avenue, Littleton, Colorado 80165.	August 28, 2003	080017
Broomfield (FEMA Docket No.: B–7438).	City and County of Broomfield (03–08–0061P).	June 19, 2003, June 26, 2003, *Boulder Daily Camera*.	The Honorable Karen Stuart, Mayor, City and County of Broomfield, One DesCombes Drive, Broomfield, Colorado 80020.	September 25, 2003	085073
Broomfield (FEMA Docket No.: B–7438).	City and County of Broomfield (03–08–0270P).	July 16, 2003, July 23, 2003, *Broomfield Enterprise*.	The Honorable Karen Stuart, Mayor, City and County of Broomfield, One DesCombes Drive, Broomfield, Colorado 80020.	June 27, 2003	085073

State and county	Location and Case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Denver (FEMA Docket No.: B–7438).	City and County of Denver (03–08–0210P).	May 15, 2003, May 22, 2003, *Denver Post*.	The Honorable John W. Hickenlooper, Mayor, City and County of Denver, 1437 Bannock Street, Suite 350, Denver, Colorado 80202.	April 24, 2003	080046
Adams Arapahoe Denver (FEMA Docket No.: B–7438).	City of Aurora (03–08–0210P).	May 15, 2003, May 22, 2003, *Denver Post*.	The Honorable Paul E. Tauer, Mayor, City of Aurora, 15151 East Alameda Parkway, Fifth Floor, Aurora, Colorado 80012.	April 24, 2003	080002
Douglas (FEMA Docket No.: B–7438).	Town of Parker (02–08–186P).	April 23, 2003, April 30, 2003, *Douglas County News-Press*.	The Honorable Gary Lasater, Mayor, Town of Parker, 20120 East Mainstreet, Parker, Colorado 80138–7334.	July 30, 2003	080310
Douglas (FEMA Docket No.: B–7438).	Unincorporated Areas (02–08–186P).	April 23, 2003, April 30, 2003, *Douglas County News-Press*.	The Honorable James R. Sullivan, Chairman, Douglas County Board of Commissioners, 100 Third Street, Castle Rock, Colorado 80104.	July 30, 2003	080049
Douglas (FEMA Docket No.: B–7438).	Unincorporated Areas (03–08–0096P).	April 23, 2003, April 30, 2003, *Douglas County News-Press*.	The Honorable James R. Sullivan, Chairman, Douglas County Board of Commissioners, 100 Third Street, Castle Rock, Colorado 80104.	July 30, 2003	080049
El Paso (FEMA Docket No.: B–7438).	City of Colorado Springs (02–08–394P).	April 24, 2003, May 1, 2003, *The Gazette*.	The Honorable Lionel Rivera, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901.	July 31, 2003	080060
El Paso (FEMA Docket No.: B–7438).	City of Colorado Springs (03–08–0223P).	June 5, 2003, June 12, 2003, *The Gazette*.	The Honorable Lionel Rivera, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901.	May 13, 2003	080060
Jefferson (FEMA Docket No.: B–7438).	Unincorporated Areas (03–08–0099P) (03–08–0456P).	March 19, 2003, March 26, 2003, *Canyon Courier*.	The Honorable Richard M. Sheehan, Chairman, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, Colorado 80419.	June 26, 2003	080087
Hawaii:					
Hawaii (FEMA Docket No.: B–7438).	Hawaii County (02–09–368P).	July 10, 2003, July 17, 2003, *Hawaii Tribune Herald*.	The Honorable Harry Kim, Mayor, County of Hawaii, 25 Aupuni Street, Hilo, Hawaii 96720.	October 16, 2003	155166
Maui (FEMA Docket No.: B–7438).	Maui County (03–09–0116P).	May 29, 2003, June 5, 2003, *Maui News*.	The Honorable Alan M. Arakawa, Mayor, Maui County, 200 South High Street, Wailuku, Hawaii 96793.	May 6, 2003	150003
Maui (FEMA Docket No.: B–7438).	Maui County (03–09–0107P).	July 3, 2003, July 10, 2003, *Maui News*.	The Honorable Alan M. Arawaka, Mayor, Maui County, 200 South High Street, Wailuku, Hawaii 96793.	June 13, 2003	150003
Idaho:					
Bonneville (FEMA Docket No.: B–7438).	City of Ammon (03–10–0229P).	July 3, 2003, July 10, 2003, *Post Register*.	The Honorable Bruce Ard, Mayor, City of Ammon, 2135 South Ammon Road, Ammon, Idaho 83406.	June 13, 2003	160028
Bonneville (FEMA Docket No.: B–7438).	Unincorporated Areas (03–10–0229P).	July 3, 2003, July 10, 2003, *Post Register*.	The Honorable Lee Stake, Chairman, Bonneville County Board of Commissioners, 605 North Capital Avenue, Idaho Falls, Idaho 83402.	June 13, 2003	160027
Nevada:					
Independent City (FEMA Docket No.: B–7438).	City of Carson City (01–09–592P).	June 19, 2003, June 26, 2003, *Nevada Appeal*.	The Honorable Ray Masayko Mayor, City of Carson City 201 North Carson Street, Suite 2 Carson City, Nevada 89701.	May 29, 2003	320001
Clark (FEMA Docket No: B–7438).	City of Henderson (03–09–0861X) (03–09–980X).	May 1, 2003, May 8, 2003, *Las Vegas Review-Journal*.	The Honorable James Gibson Mayor, City of Henderson 240 South Water Street Henderson, Nevada 89015.	April 21, 2003	320005

State and county	Location and Case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Clark (FEMA Docket No.: B–7438).	Unincorporated Areas (02–09–1071P).	April 24, 2003, May 1, 2003, *Las Vegas Review-Journal*.	The Honorable Mary J. Kincaid-Chauncey Chair, Clark County Board of Commissioners 500 South Grand Central Parkway Las Vegas, Nevada 89155.	July 31, 2003	320003
Clark (FEMA Docket No.: B–7438).	Unincorporated Areas (03–09–0861X) (03–09–980X).	May 1, 2003, May 8, 2003, *Las Vegas Review-Journal*.	The Honorable Mary J. Kincaid-Chauncey Chair, Clark County Board of Commissioners 500 South Grand Central Parkway Las Vegas, Nevada 89155.	April 21, 2003	320003
Clark (FEMA Docket No.: B–7438).	Unicorporated Areas (02–09–718P).	July 10, 2003, July 17, 2003, *Las Vegas Review-Journal*.	The Honorable Mary J. Kincaid-Chauncey Chair, Clark County Board of Commissioners 500 South Grand Central Parkway Las Vegas, Nevada 89155.	June 19, 2003	320003
Texas:					
Dallas (FEMA Docket No.: B–7438).	City of Dallas (00–06–248P).	January 31, 2002, February 7, 2002, *Dallas Morning News*.	The Honorable Ron Kirk Mayor, City of Dallas 1500 Marilla Street Dallas, Texas 75201.	November 8, 2000	480171

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: March 9, 2004.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–6180 Filed 3–18–04; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031125292–4061–02; I.D. 031504C]

Fisheries of the Exclusive Economic Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the first seasonal apportionment of the 2004 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 19, 2004, through 1200 hrs, A.l.t., April 1, 2004.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

The final 2004 harvest specifications for groundfish of the GOA (69 FR 9261, February 27, 2004) established the Pacific halibut bycatch allowance for the GOA trawl deep-water species fishery, which is defined at § 679.21(d)(3)(iii)(B). The bycatch allowance for the period from 1200 hrs, A.l.t., January 20, 2004, through 1200 hrs, A.l.t., April 1, 2004, is 100 metric tons.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the first seasonal apportionment of the 2004 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are: all rockfish of the genera *Sebastes* and *Sebastolobus*, deep water flatfish, rex sole, arrowtooth flounder, and sablefish.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the Agency from responding to the most recent fisheries data in a timely fashion and would delay the closure of the deep-water species fishery by vessels using trawl gear in the GOA.

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

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

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

Dated: March 16, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–6211 Filed 3–16–04; 2:12 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 54
Friday, March 19, 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 AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

RIN 0584–AD32

Food Stamp Program: Employment and Training Program Provisions of the Farm Security and Rural Investment Act of 2002

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This rulemaking proposes to amend Food Stamp Program (FSP) regulations to implement Food Stamp Employment and Training (E&T) Program provisions of section 4121 of the Farm Security and Rural Investment Act of 2002 (the Farm Bill). The Department proposes to establish a reasonable formula to allocate 100 percent Federal funds authorized under the Farm Bill to carry out the E&T Program each fiscal year (FY). The Department further proposes to implement the Farm Bill provisions that make available up to $20 million a year in additional unmatched Federal E&T funds for State agencies that commit to offer an education/training or workfare opportunity to every applicant and recipient who is an able-bodied adult without dependents (ABAWD) limited to 3 months of food stamp eligibility in a 36-month period (3-month time limit) and who would otherwise be terminated; and to eliminate the current Federal cost-sharing cap of $25 per month on the amount State agencies may reimburse E&T participants for work expenses other than dependent care. This rulemaking also proposes to implement Farm Bill provisions that expand State flexibility in E&T Program spending by repealing the requirements that State agencies earmark 80 percent of their annual 100 percent Federal E&T grants to serve ABAWDs; they meet or exceed their FY 1996 State administrative spending levels to access funds made available by the Balanced Budget Act of 1997 (the Balanced Budget Act); and the Secretary be given the authority to establish maximum reimbursement costs of E&T Program components.

DATES: Comments must be received on or before May 18, 2004.

ADDRESSES: The Food and Nutrition Service invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- Mail: Send comments to Michael Atwell, Senior Program Analyst, Program Design Branch, Program Development Division, FSP, FNS, 3101 Park Center Drive, Room 810, Alexandria, Virginia, (703) 305–2449.
- E-Mail: Send comments to *fsphq-web@fns.usda.gov.*
- FAX: Submit comments by facsimile transmission to (703) 305–2486.
- Disk or CD–Rom: Submit comments on disk or CD–Rom to Mr. Atwell at the above address.
- Hand Delivery or Courier: Deliver comments to Mr. Atwell at the above address.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Michael Atwell, Senior Program Analyst, Program Design Branch, Program Development Division, FSP, FNS, 3101 Park Center Drive, Room 810, Alexandria, Virginia, (703) 305–2449, or via the Internet at *michael_atwell@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

Additional Information on Comment Filing

Electronic Access and Filing Address

You may view and download an electronic version of this proposed rule at *http://www.fns.usda.gov/fsp/.* You may also comment via the Internet at the same address. Please include ''Attention: RIN 0584–AD32'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your message, contact us directly at (703) 305–2449.

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any change you recommend. Where possible, you should reference the specific section of paragraph of the proposed rule you are addressing. We may not consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period or comments delivered to an address other than those listed above.

We will make all comments, including names, street addresses, and other contact information of respondents, available for public inspection on the 8th floor, 3101 Park Center Drive, Alexandria, Virginia 22302 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday, excluding Federal holidays. Individual respondents may request confidentiality. If you wish to request that we consider withholding your name, street address, or other contact information from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

Executive Order 12866

This proposed rule was determined to be economically significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Executive Order 12372

The FSP is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3105, subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' paragraph of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Eric M. Bost, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. The changes will affect food stamp applicants and recipients who are subject to FSP work requirements. The rulemaking also affects State and local welfare agencies that administer the FSP, to the extent that they must implement the provisions described in this action.

Unfunded Mandate Analysis

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

Regulatory Impact Analysis

Need for Action

This action is needed to implement the E&T Program provisions of section 4121 of the Farm Bill. These provisions would: (1) Establish a reasonable formula for allocating 100 percent Federal funds authorized under the Farm Bill to carry out the E&T Program each fiscal year; (2) make available up to $20 million a year in additional unmatched Federal E&T funds for State agencies that commit to offer an education/training or workfare opportunity to every ABAWD applicant and recipient who would otherwise be terminated under the 3-month time limit; (3) rescind the balance of unobligated funds carried over from FY 2001; (4) eliminate the current Federal cost-sharing cap of $25 per month on the amount State agencies may reimburse E&T participants for work expenses other than dependent care; (5) repeal the requirement that State agencies earmark 80 percent of their annual 100 percent Federal E&T grants to serve ABAWDs; and (6) repeal the requirement that State agencies meet or exceed their FY 1996 State administrative spending levels to access funds made available by the Balanced Budget Act.

Benefits

State agencies will benefit from the provisions of this rule because they streamline the annual E&T Program grant allocation process, expand State agency flexibility in serving at-risk ABAWDs and other work registrants, and they eliminate unnecessary and complex rules on how State agencies can spend E&T Program funds.

Costs and Participation Impacts

The E&T provisions of the Farm Bill reduce the overall level of 100 percent Federal E&T funding, relieve States from obligations to spend matched E&T funding, and allow States to decrease the portion of E&T funding targeted to serve ABAWDs. To the extent that some States do not replace lost Federal grants with additional State spending, or decrease State spending, E&T services will be reduced. Some ABAWDs who are subject to the 3-month time limit will be made ineligible when they do not receive qualifying services.

These provisions are expected to save $40 million in FY 2003, the first year they are fully implemented. Over the five-year period FY 2003 through FY 2007, the provisions are expected to produce a savings of $227 million. They are expected to result in 12,000 persons becoming ineligible for food stamp benefits in FY 2003.

Executive Order 13132

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have ''federalism implications,'' agencies are directed to provide a statement for inclusion in the preamble to the regulation describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

Prior Consultation With State Officials

Prior to drafting the rule, we received input from State and local agencies. Since the FSP is a State administered, Federally funded program, our national headquarters staff and regional offices have formal and informal discussions with State and local officials on an ongoing basis regarding program implementation and policy issues. This arrangement allows State and local agencies to provide feedback that forms the basis for any discretionary decisions made in this and other FSP rules. In addition, we presented our ideas and received feedback on program policy at various State, regional, national, and professional conferences.

Nature of Concerns and the Need to Issue This Rule

State agencies generally want greater flexibility in their operation of the E&T Program. State agencies have indicated that providing them this flexibility would greatly enhance their ability to more efficiently administer the FSP.

Extent to Which We Meet Those Concerns

FNS has considered the impact on State and local agencies. This rule deals with changes required by law, which were effective on May 13, 2002. The overall effect is to lessen the administrative burden by providing increased State agency flexibility in E&T Program spending. FNS is not aware of any case where any discretionary provisions of the rule would preempt State law.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review

of the rule's intent and provisions, and the characteristics of food stamp households and individual participants, FNS has determined that there is no way to soften the effect on any of the protected classes. Other than how to allocate E&T funds among State agencies, FNS had no discretion in implementing any of these changes, which were effective upon enactment of the Farm Bill on May 13, 2002. All data available to FNS indicate that protected individuals have the same opportunity to participate in the FSP as non-protected individuals. FNS specifically prohibits the State and local government agencies that administer the Program from engaging in actions that discriminate based on race, color, national origin, gender, age, disability, marital or family status. Regulations at 7 CFR 272.6 specifically state that:

State agencies shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs. Discrimination in any aspect of program administration is prohibited by these regulations, the Food Stamp Act of 1977 (the Act), the Age Discrimination Act of 1975 (Pub. L. 94–135), the Rehabilitation Act of 1973 (Pub. L. 93–112, section 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR part 15.

Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 272.6.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. chap. 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. Information collections in this proposed rule have been previously approved under OMB #0584–0339.

Background

The Food Stamp Employment and Training (E&T) Program was established by Congress in 1985 to provide able-bodied adult food stamp recipients with education and training opportunities designed to lead to employment and reduced reliance on food stamps. All 50 States, as well as the District of Columbia, Guam, and the Virgin Islands, are required to operate an E&T program. The E&T Program, administered nationally by the Food and Nutrition Service (FNS), is funded by an annual 100 percent Federal E&T allocation. Each State agency receives an E&T grant to pay for the administration of its program. In addition, Federal funds are available to reimburse State agencies 50 percent of State funds they use to administer the E&T Program and to reimburse 50 percent of participant expenses, such as transportation and dependent care.

Welfare reform legislation enacted in August 1996 established a 3-month time limit for food stamp participation by ABAWDs. Under the 3-month time limit, ABAWDs may receive food stamp benefits for no more than 3 months in a 36-month period unless they meet the ABAWD work requirement—work at least 20 hours a week, participate in a qualifying education or training activity for at least 20 hours a week, or participate in workfare (working in a public service capacity for the number of hours equal to their monthly food stamp benefit divided by the higher of the Federal or State minimum wage). The legislation also authorized the Secretary to waive the ABAWD work requirement—at the request of a State agency—for ABAWDs residing in areas of the State that have an unemployment rate of over 10 percent or in areas that do not have a sufficient number of jobs to provide employment for the ABAWDs.

The Balanced Budget Act authorized $599 million in 100 percent Federal funds—in addition to the regular 100 percent grant—over 5 years for the E&T Program. All 100 percent Federal funds were to remain available until obligated or expended. However, in order to access the additional money, the law required States to spend at least as much of their own funds as they did in FY 1996 to administer the E&T Program and the optional workfare program (if one was available). In addition, the law required States to earmark at least 80 percent of all 100 percent Federal E&T funds to be used to create education, training, and workfare opportunities that qualify ABAWDs to maintain their eligibility for food stamps. The method for allocating the 100 percent Federal E&T grants was formulated to reflect the numbers of at-risk ABAWDs in each State, based on estimated ABAWD populations reported in FY 1996 Quality Control (QC) survey data, adjusted annually for caseload changes. The Balanced Budget Act required the Secretary to monitor State agency E&T expenditures, including the cost of individual program components. The Secretary was afforded the option of establishing maximum component reimbursement rates that reflect the reasonable cost of providing qualifying opportunities to ABAWDs subject to the 3-month time limit. Lastly the Balanced Budget Act provided State agencies the option to exempt up to 15 percent of their ABAWDs subject to the ABAWD work requirement.

State agencies, already dealing with the difficult task of administering ABAWD time limit provisions, were faced with a complex new set of rules for operating their E&T programs. In addition to the use of funds and maintenance of effort requirements, the Department, under authority granted by the Balanced Budget Act, established maximum component rates for reimbursing State agencies for their expenses in creating and maintaining qualifying activities for ABAWDs to remain eligible. The Department initiated the rates to ensure that Federal E&T funds would be adequate to efficiently and economically serve as many at-risk ABAWDs as possible. However, over a period of time it became clear that, as more and more ABAWDs left the FSP after exhausting their 3 months of eligibility, the infusion of Federal funds did not have the intended effect. State agencies maintained that ABAWDs are the most difficult food stamp population to serve. While many are attached to the job market and stay on the program a short time, many others face significant barriers, such as homelessness, mental health issues and substance abuse. Consequently, according to many State agency administrators, ABAWDs are among the most non-compliant food stamp recipients in terms of cooperating with State agency efforts to help them maintain eligibility. Several State agencies decided not to serve ABAWDs beyond the non-qualifying activities already offered. Other State agencies reported that they limited service to only the most capable and motivated ABAWDs. As a result, the ABAWD caseload steadily declined, and the amount of unspent Federal E&T funds grew.

Many State agencies protested the requirement that they meet a maintenance of effort requirement by spending as much State administrative funds as they did in FY 1996 before they could access the additional 100 percent Federal funding provided under the Balanced Budget Act. They pointed out that 18 of 53 State agencies operating the E&T Program did not spend State

administrative funds in FY 1996 and could access their additional Federal funding with no maintenance of effort restrictions.

State agencies also believed that the restrictions on the use of Federal E&T funds prevented them from adequately serving members of low-income families who do not face the time limit. They maintained that 20 percent of their 100 percent Federal funds was not sufficient to create meaningful activities for those recipients.

On May 13, 2002, the President signed into law the Farm Bill, which reauthorized the FSP, including the E&T Program, through FY 2007. Section 4121 of the Farm Bill made several immediate, significant changes to the E&T Program. These changes, along with the Department's proposals for amending FSP regulations, are discussed below.

Funding for Food Stamp Employment and Training Programs

Allocation of E&T Grants

Current regulations at 7 CFR 273.7(d)(1)(i) describe the procedures for allocating 100 percent Federal E&T funding. Each State agency receives a Federal E&T grant consisting of a base amount and an additional amount available only to those State agencies that elect to meet a maintenance of effort requirement. Both grant amounts are allocated to State agencies based on each State's portion of ABAWDs subject to the time limit—as a percentage of such ABAWDs nationwide—who do not reside in an area for which the State has been granted a waiver of the ABAWD work requirement, or who do reside in an area of the State granted a waiver of the ABAWD work requirement if the State agency provides E&T services in the area to ABAWDs. To determine each State agency's share of 100 percent Federal E&T funds allocated in a fiscal year, FNS estimates the portion of ABAWDs subject to the work requirement in each State using 1996 QC survey data, adjusted annually to reflect changes in each State's food stamp caseload.

Additionally, current regulations at 7 CFR 273.7(d)(1)(i) provide that no State agency receive less than $50,000 in 100 percent Federal E&T funds. To ensure this, FNS is authorized to reduce, if necessary, the grant of each State agency allocated more than $50,000 proportionate to the number of non-waived, non-exempted ABAWDs in the State subject to the work requirement, or non-exempted ABAWDs living in waived areas in which the State agency provides E&T services, compared to the total number of such ABAWDs in all the State agencies receiving more than $50,000. FNS distributes the funds from the reduction to State agencies initially allocated less than $50,000 so they receive the $50,000 minimum.

Section 4121 of the Farm Bill amended section 16(h)(1)(B) of the Act to provide that 100 percent Federal E&T funds be allocated and reallocated among State agencies under a reasonable formula that is determined and adjusted by the Secretary and takes into account the numbers of ABAWDs not exempt from the work requirement.

The Department proposes to amend 7 CFR 273.7(d)(1)(i) to provide that FNS will allocate 100 percent Federal E&T grants from funding available each fiscal year using a two-part formula designed to take into account non-waived, non-exempted ABAWDs subject to the work requirement, and to ensure that each State agency receives an appropriate, equitable share of funds.

To do so, the Department proposes to allocate one-half of the annual 100 percent Federal E&T grant based on its estimate of the numbers of ABAWDs in each State who do not reside in an area subject to a waiver granted in accordance with 7 CFR 273.24(f) or who are not included in each State agency's 15 percent ABAWD exemption allowance under 7 CFR 273.24(g), as a percentage of such ABAWDs nationwide. FNS proposes to determine each State agency's percentage of non-waived, non-exempted ABAWDs using ABAWD data collected by Mathematica Policy Research, Incorporated (MPR), from its September 2001 report, ''Imposing a Time Limit on Food Stamp Receipt: Implementation of the Provisions and Effects on FSP Participation.'' FNS believes this data is the most accurate and reliable available and will continue to be so for the foreseeable future. FNS proposes to use the study data to derive percentages for the numbers of waived/exempted ABAWDs in each State. FNS will apply those percentages to the most recent fiscal year for which QC survey ABAWD data is complete to arrive at its estimate of each State agency's ABAWD population minus ABAWDs in waived areas and exempted ABAWDs. Since FNS had to allocate FY 2003 funds before regulations could be issued, we used FY 2001 QC survey figures for FY 2003; for FY 2004, FY 2002 figures will be used, and so forth.

The Department proposes to allocate the balance of the annual 100 percent Federal E&T grant based on the number of work registrants in each State as a percentage of work registrants nationwide. FNS will use work registrant data reported by each State agency on the FNS–583, Employment and Training Program Activity Report from the most recent complete Federal fiscal year.

The Department chose this proposed allocation methodology because it takes into account at-risk ABAWDs—as required by law—while utilizing valuable work registrant information reported on the FNS–583 to prevent overemphasis of ABAWD populations to the detriment of other, non-ABAWD work registrants who benefit from the E&T Program. FNS continues to work with State agencies that have difficulty with the consistency and reliability of their FNS–583 information. Additionally, FNS revised and simplified the information reporting requirements for the FNS–583; this will improve reliability.

Lastly, the Department proposes to amend 7 CFR 273.7(d)(1)(i) by revising the method by which the $50,000 minimum allocations are to be calculated. For each State agency scheduled to be allocated more than $50,000, FNS proposes to calculate how much it will have its grant reduced, if necessary, as follows. First, disregarding all those State agencies scheduled to receive less than $50,000, FNS will calculate each remaining State agency's percentage share of the fiscal year's E&T grant. Next, FNS will multiply the grant—less $50,000 for every State agency under the minimum—by the same percentage share for each remaining State agency to arrive at the revised amount. The difference between the original and the revised amounts will represent each State agency's contribution to the $50,000 minimum allocation(s).

The Department welcomes comments on its proposed method for allocating 100 percent Federal E&T funds and encourages alternative proposals.

Use of Funds

Current regulations at 7 CFR 273.7(d)(1)(ii)(A), (d)(1)(ii)(B), (d)(1)(ii)(C), and (d)(1)(ii)(D) provide that not less than 80 percent of a State agency's 100 percent Federal E&T grant each fiscal year—both the base and additional Balanced Budget Act allocations—be used to serve ABAWDs who are meeting the work requirement. The remaining 20 percent of a State agency's 100 percent Federal E&T grant may be used to provide E&T components for non-ABAWDs or to provide activities that do not meet the ABAWD work requirement, such as job search or job search training programs for any food stamp recipient. If a State agency spends more than 20 percent of

its E&T grant on non-ABAWDs and/or non-ABAWD activities, FNS will, at the normal 50/50 match rate, reimburse the State agency for allowable costs in excess of 20 percent.

Section 4121 of the Farm Bill amended section 16(h)(1)(E) of the Act by removing the requirement that State agencies use not less than 80 percent of their Federal E&T grants to serve ABAWDs.

The Department proposes to amend 7 CFR 273.7(d)(1)(ii) by removing this requirement.

Maintenance of Effort

Current regulations at 7 CFR 273.7(d)(1)(iii) provide that, in order to be eligible for funds allocated under the Balanced Budget Act, a State agency must expend at least as much State funds for administration of E&T and optional workfare programs (if applicable) as it did in FY 1996.

Section 4121 of the Farm Bill amended section 16(h)(1)(F) of the Act by removing the requirement that State agencies maintain the expenditures of the State agency for E&T and workfare programs for each fiscal year at a level not less than its level of expenditures for E&T and workfare programs in FY 1996.

The Department proposes to amend 7 CFR 273.7(d)(1) by removing the maintenance of effort requirement.

Component Costs

Prior to enactment of the Farm Bill, section 16(h)(1)(G) of the Act required the Secretary to monitor State agencies' expenditures of Federal E&T funds, including the costs of individual components of State agencies' programs. It authorized the Secretary to determine the reimbursable costs of E&T components to ensure they reflect the reasonable cost of efficiently and economically providing components appropriate to recipient E&T needs.

On September 3, 1999, the Department published an interim rule (64 FR 48246) that amended food stamp regulations to add new requirements regarding E&T components costs at 7 CFR 273.7(d)(1)(iv). The Department determined that setting reimbursement rates for E&T activities was necessary to promote the intent of the increased E&T funding, which was to create a sufficient number of work opportunities so that as many ABAWDs who wished to work could be given the opportunity to do so before losing eligibility for the program. The Department believed the reimbursement rates would help ensure that the maximum number of opportunities was created with the available funds, thus potentially keeping as many ABAWDs as possible eligible for the program.

However, after observing the reimbursement rates in effect and having the opportunity for further consideration of the issue, the Department determined that the reimbursement rate structure constrained State agencies' ability to serve ABAWDs effectively in State E&T programs. Further, the Department determined that its elimination would allow State agencies to fully utilize the funds available to them to create opportunities for ABAWDs that not only maintain their food stamp eligibility but also help them become and stay employed.

In a final rule (67 FR 41589) published on June 19, 2002, the Department eliminated the reimbursement rate structure, while maintaining its authority, under 7 CFR 273.7(d)(1)(iv), to monitor State agency E&T expenditures to ensure that planned and actual spending reflects the reasonable cost of providing E&T services.

Section 4121 of the Farm Bill amended section 16(h)(1)(G) of the Act by removing the requirement to monitor State agency E&T expenditures. However, the Secretary retains the authority to ensure that State agencies efficiently and effectively administer the FSP, including the E&T Program, by complying with the provisions of the Act, the regulations issued pursuant to the Act, and the FNS-approved State E&T Plan of Operation.

Therefore, the Department proposes to remove the component cost provision at 7 CFR 273.7(d)(1)(iv).

Additional Funding for States that Serve ABAWDS

Prior to elimination of component reimbursement rates, the Department offered State agencies greater flexibility to meet the intent of the increased funding provided under the Balanced Budget Act. State agencies that committed, or ''pledged'' to offer a qualifying education, training, or workfare position to all non-waived, non-exempted ABAWDs subject to the time limit were exempted from adhering to the maximum reimbursement rates in effect. The Farm Bill continues to provide some of that same flexibility for State agencies committed to serving their ABAWD population. Section 4121(a)(3)(E) of the Farm Bill amended the Act by authorizing an additional $20 million in 100 percent Federal E&T funds each fiscal year to be allocated among those State agencies that offer a qualifying education, training, or workfare position to all ABAWDs subject to the time limit.

To be eligible for a share of the additional $20 million, a State agency must make and comply with a commitment to offer a qualifying education, training, or workfare position to each ABAWD applicant or recipient who is in the last month of the 3-month time limit; who does not live in an area subject to a waiver of the time limit; and who is not exempt from the time limit as part of the State agency's 15 percent ABAWD exemption allowance. Eligible State agencies must use their share of the $20 million allocation—along with their regular Federal E&T grants, if necessary—to defray costs incurred in serving these ''at-risk'' ABAWDs. While a participating pledge State agency may use a portion of the additional funding to provide E&T services to ABAWDs who are not at risk, its first priority is to guarantee that its at-risk ABAWDs are provided the opportunity to remain eligible.

Unlike regular Federal E&T grants, this $20 million allocation does not remain available until obligated or expended. At the end of each fiscal year, unobligated, unspent portions of the $20 million must be returned to the U.S. Treasury.

Therefore, the Department proposes to add a new paragraph at 7 CFR 273.7(d)(3), titled ''Additional allocations,'' that provides for an additional allocation of $20 million in 100 percent Federal funds each fiscal year to State agencies that commit to ensuring the availability of education, training and workfare opportunities that permit ABAWDs to remain eligible for food stamps beyond the 3-month time limit. To be eligible, a State agency must make and comply with a commitment, or ''pledge,'' to offer a qualifying education/training activity or workfare position to each ABAWD applicant or recipient who is ''at risk,'' *i.e.*, one who: (1) Is in the last month of the 3-month time limit; (2) does not live in an area covered by a waiver of the time limit; and (3) is not part of a State agency's 15 percent ABAWD exemption allowance.

The Department proposes that interested State agencies will have one opportunity to make the pledge for the upcoming fiscal year, and no pledges will be accepted after the beginning of the new fiscal year on October 1. An interested State agency should include in its annual State E&T Plan or State Plan update—due no later than August 15 each year—its request to be considered as a pledge State. The Department proposes to require an interested State agency to include in its request estimated costs of fulfilling its

pledge; a description of management controls in place to meet pledge requirements; a discussion of its capacity and ability to serve at-risk ABAWDs; information about the size and special needs of its ABAWD population; and information about the education, training, and workfare components it will offer to meet the ABAWD work requirement. The Department proposes that FNS will review each request based on the information provided. If the information clearly indicates that the State agency will be unable to fulfill its commitment, FNS may require the State agency to address its deficiencies before it is allowed to participate as a pledge State. If the State agency does not address its deficiencies by October 1 it will not be allowed to participate as a pledge State.

The Department also proposes that, once it determines how many State agencies will participate each fiscal year, it will, as early as possible in the fiscal year, allocate among them the $20 million based on its estimate of the numbers of ABAWDs in each participating pledge State who do not reside in an area subject to a waiver granted in accordance with 7 CFR 273.24(f) or who are not included in each State agency's 15 percent ABAWD exemption allowance under 7 CFR 273.24(g), as a percentage of such ABAWDs in all the participating pledge States. FNS proposes to use the same percentages of non-waived, non-exempted ABAWDs as it uses to allocate the annual 100 percent Federal E&T grant to arrive at its estimate of each pledge State's at-risk ABAWD population. This method ensures that each pledge State will receive a share of the $20 million based entirely on those ABAWDs facing the time limit, as Congress intended. It also guarantees that those States in which all ABAWDs reside in waived areas and/or are exempted do not share in the funding. If a pledge State will not expend its entire share of the additional $20 million during the fiscal year, FNS proposes to reallocate the unobligated, unexpended funds to other pledge States on a first come-first served basis. FNS will notify other pledge States of the availability of additional funding. To qualify, a pledge State must have already obligated its entire annual 100 percent Federal E&T grant, excluding an amount that is proportionate to the number of months remaining in the fiscal year, and it must guarantee in writing that it intends to obligate its entire grant by the end of the fiscal year. A State's annual 100 percent Federal E&T grant is its share of the regular 100 percent Federal E&T allocation plus its share of the additional $20 million (if applicable).

For example: State A is allocated a regular E&T grant of $1,000,000, plus a $200,000 share of the $20 million additional allocation for pledge States—a total annual 100 percent Federal E&T grant of $1,200,000. In March, State A is informed of the availability of unobligated, unexpended pledge State funding. To qualify for a part of the funds, it must have already obligated one-half ($600,000) of its total annual grant ($1,200,000 divided by 12 equals $100,000. $100,000 times 6 months—October through March—equals $600,000). Additionally, it must guarantee in writing that it intends to obligate the remaining $600,000 by September 30.

Interested pledge States must submit their requests for additional funding to FNS. FNS will review the requests and, if they are determined reasonable and necessary, will reallocate some or all of the unobligated, unspent ABAWD funds, as it considers appropriate and equitable. Although a pledge State may use a portion of the additional funding to serve ABAWDs not at risk, it must honor its commitment to serve at-risk ABAWDs before doing so.

Further, the Department proposes to specify that, unlike regular 100 percent Federal E&T funds, unobligated funds from this additional allocation are not permitted under the Act be carried over into the subsequent fiscal year. Rather, they must be returned to the U.S. Treasury at the end of each fiscal year.

Lastly, The Department proposes to specify that a pledge State that fails to meet its commitment may be disqualified from participating in subsequent fiscal years.

Rescission of Carryover Funds

The Farm Bill maintains the provisions established by the Balanced Budget Act that regular 100 percent Federal E&T funds remain available until expended. It also continues to authorize the Secretary to reallocate unexpended funds to other States during the fiscal year for which they were appropriated or the subsequent fiscal year appropriately and equitably. However, section 4121(b) of the Farm Bill provided that all carryover funds from any fiscal year before FY 2002 were rescinded on the date of enactment, unless obligated by a State agency before that date. Thus, as of May 13, 2002 all unobligated 100 percent Federal E&T funds appropriated for any fiscal year prior to FY 2002 were no longer available.

E&T 100 percent funding appropriated for FY 2002 and subsequent fiscal years are likewise unaffected by the rescission, and, excluding the additional funding authorized for States that serve ABAWDs, will be available for carryover and reallocation on a first come—first served basis. Each year FNS will notify State agencies of the availability of carryover funding. Interested State agencies must submit their requests for carryover funding to FNS. If the requests are determined reasonable and necessary, FNS will allocate carryover funding to meet some or all of the State agencies' requests, as it considers appropriate and equitable. The factors FNS will consider when reviewing a State agency's request will include the size of the request relative to the level of the State agency's E&T spending in prior years, the specificity of the State agency's plan for spending carryover funds, and the quality of program and scope of impact for the State agency's E&T program and proposed use of carryover funds.

Participant Reimbursement

Current regulations at 7 CFR 273.7(d)(3)(ii) require a State agency to reimburse the actual costs of transportation and other costs, except dependent care costs, it determines to be necessary and directly related to participation in E&T. Only costs up to $25 per participant per month are subject to Federal cost share assistance.

In 1982 Congress passed legislation establishing the optional workfare program under which eligible recipients work in public service jobs in exchange for their food stamps. The workfare legislation established $25 a month per participant as the maximum reimbursable amount, at the 50 percent match rate, for costs, such as transportation, reasonably necessary and directly related to participation in the program.

When Congress established the E&T Program in 1985, it continued the requirement that State agencies reimburse participant expenses up to $25 per month per participant. State agencies were allowed to reimburse expenses in excess of $25 using their own funds, but the maximum Federal contribution remained $12.50.

While subsequent E&T-related legislation retained the $25 maximum, State agencies argued that they should be allowed to set the participant reimbursement maximum at a level that reflects the true costs of transportation. They contended that transportation is a major barrier to E&T participation, especially in rural areas, that $25 was not enough to cover the expense of getting to and from E&T activities, and that it certainly was insufficient to cover

other acceptable participation related expenses as well.

Section 4121(d) of the Farm Bill amended the Act by eliminating the $25 maximum participant reimbursement for the costs of transportation and other actual costs other than dependent care. This provides State agencies the opportunity to establish reimbursement levels that reflect the actual transportation situations in their jurisdictions. In addition, elimination of the $25 maximum allows State agencies to expand the types of participant expenses they are able to reimburse. In the past, transportation expenses usually accounted for the entire $25 reimbursement. Now, State agencies may be able to reimburse E&T participants for such acceptable work, training, or education related expenses as uniforms, personal safety items or other necessary equipment, and books or training manuals, with the Federal government defraying half the costs.

In addition, it is possible that State agencies will earmark more State funds—matched by Federal funds—to reimburse expenses related to E&T participation but aimed at enhancing a participant's chances of finding employment. For example, a State agency may choose to provide a clothing allowance to permit participants to purchase appropriate clothing for job search and for job interviews. Such an allowance would help E&T participants successfully compete for jobs. Other expenses, such as license and bonding fees required for employment, for which an E&T participant is liable, could also be considered for reimbursement by State agencies.

We believe that this expanded use of participant reimbursements is allowable under the Act and would be beneficial in achieving self-sufficiency for many E&T participants.

Therefore, the Department proposes to redesignate 7 CFR 273.7(d)(3) as 7 CFR 273.7(d)(4) and to amend the newly redesignated 7 CFR 273.7(d)(4)(ii) by removing the $25 per month per participant limitation on Federal cost sharing for participant expenses.

We also propose to include language requiring State agencies to provide, in their annual State E&T Plans, information about which expenses they plan to reimburse. FNS will review this information as part of the overall plan approval process.

Non-Financial Program Reporting Requirements

Each State agency is responsible for maintaining information about its E&T program and for reporting it quarterly to FNS. Form FNS–583, E&T Program Activity Report, was designed to capture the information and to provide a standard, consistent means of accumulating and analyzing national E&T Program data. The form has undergone several permutations, the latest coming as a result of Balanced Budget Act, which modified the E&T Program to focus State agency efforts on a particular segment of the food stamp population—ABAWDs—and contained provisions governing the use of Federal E&T funds. Form FNS–583 was extensively revised to capture information that permitted FNS to monitor State agency ABAWD spending to ensure compliance with the maximum reimbursement rates that were in effect and to ensure that State agencies met the use of funds requirement. In addition, form FNS–583 was used to capture the numbers of ABAWDs exempted under each State agency's 15 percent ABAWD exemption allowance.

With the elimination of Balanced Budget Act funding provisions, it became necessary to once again revise form FNS–583, to streamline and simplify the data required of each State agency to provide national oversight of E&T Program operations. Current regulations at 7 CFR 273.7(c)(8), (c)(9), and (c)(10) contain the requirements for completing the FNS–583.

The Department proposes to amend regulations to describe the new requirements for completing the FNS–583, based on its recent revision to reflect Farm Bill provisions.

Reduction in Work Effort

One statutory exemption from FSP work requirements is employment of 30 or more hours weekly or weekly earnings at least equivalent to the Federal minimum wage multiplied by 30 hours. The 1996 welfare reform legislation added a new work requirement that made ineligible those individuals who reduce work effort to less than 30 hours per week. The reduction in work effort provision was included in the June 19, 2002, final rule (67 FR 41589). The current regulation at 7 CFR 273.7(j)(3)(iii) provides that the minimum wage equivalency does not apply when determining a reduction in work effort. However, subsequent policy clarifications made clear that the minimum wage equivalency must apply when making these determinations. Section 6(d)(2)(E) of the Act establishes one criterion for exemption from FSP work requirements as working a minimum of 30 hours a week or earning the minimum wage equivalent of at least 30 hours a week. Thus, in accordance with the Act, an individual exempt from FSP work requirements because he or she is working a minimum of 30 hours a week who reduces his or her work hours to less than 30, but who continues to earn more in weekly wages than the Federal minimum wage multiplied by 30 hours, remains exempt from FSP work requirements, and is not subject to disqualification.

The Department is taking this opportunity to clarify its policy concerning reduction in work effort.

List of Subjects in 7 CFR Part 273

Administrative practice and procedures, Food stamps, Grant programs—social programs, Penalties, Reporting and recordkeeping.

Accordingly, 7 CFR part 273 is proposed to be amended as follows:

1. The authority citation for part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2. In § 273.7:

a. Paragraph (c)(6)(ii) is amended by removing the period at the end of sentence three and adding in its place a semi-colon, and by removing the last sentence;

b. paragraph (c)(6)(vii) is revised;

c. new paragraphs (c)(6)(xv) and (c)(6)(xvi) are added;

d. paragraphs (c)(7), (c)(8), (c)(9), (c)(10), (c)(11), (c)(12), (c)(13), and (c)(14) are redesignated as paragraphs (c)(8), (c)(9), (c)(10), (c)(11), (c)(12), (c)(13), (c)(14), and (c)(15), respectively, and new paragraph (c)(7) is added;

e. newly redesignated paragraph (c)(8) is amended by removing the word ''biennially'' in the first sentence and adding in its place the word ''annually'';

f. newly redesignated paragraphs (c)(9), (c)(10), and (c)(11) are revised;

g. paragraph (d)(1)(i) is revised;

h. paragraph (d)(1)(ii) is amended by removing paragraphs (d)(1)(ii)(A), (d)(1)(ii)(B), (d)(1)(ii)(C), and (d)(1)(ii)(D), and redesignating paragraphs (d)(1)(ii)(E), (d)(1)(ii)(F), (d)(1)(ii)(G), and (d)(1)(ii)(H) as paragraphs (d)(1)(ii)(A), (d)(1)(ii)(B), (d)(1)(ii)(C), and (d)(1)(ii)(D), respectively;

i. paragraphs (d)(1)(iii) and (d)(1)(iv) are removed;

j. paragraphs (d)(3), (d)(4), (d)(5), and (d)(6) are redesignated as (d)(4), (d)(5), (d)(6), and (d)(7), respectively, and new paragraph (d)(3) is added;

k. newly redesignated paragraph (d)(4) is amended by adding a new sentence after the first sentence of the introductory text, removing the regulatory references ''paragraphs

(d)(3)(i) and (d)(3)(ii)'' in sentences four and seven and adding in their place the regulatory references ''paragraphs (d)(4)(i) and (d)(4)(ii)'', and by removing the regulatory references ''paragraph (d)(3)(i) and (d)(3)(ii)'' in sentence eight and adding in its place the regulatory reference ''paragraph (d)(4)(i)'';

l. newly redesignated paragraph (d)(4)(i) is amended by removing the last sentence;

m. newly redesignated paragraph (d)(4)(ii) is amended by removing the last sentence;

n. newly redesignated paragraph (d)(4)(v) is amended by removing the regulatory reference ''paragraphs (d)(3)(i) and (d)(3)(ii)'' in the second sentence and adding in its place the regulatory reference ''paragraphs (d)(4)(i) and (d)(4)(ii)'', and removing the regulatory reference ''paragraph (d)(3)(i)'' in the last sentence and adding in its place the regulatory reference ''paragraph (d)(4)(i)'';

o. paragraph (f)(7)(ii) is amended by removing the regulatory reference ''paragraphs (b)(1)(iii) and (b)(1)(v)'' in the second sentence and adding in its place the regulatory reference ''paragraphs (b)(1)(iii) or (b)(1)(v)'';

p. paragraph (f)(7)(iv) is amended by removing words ''exemptions provided in paragraphs (b)(1)(iii) and (b)(1)(v)'' in the first sentence and adding in their place the words ''exemption in paragraph (b)(1)(iii)'';

q. paragraph (j)(3)(iii) is amended by revising the last sentence.

The revisions and additions read as follows:

§ 273.7 Work provisions.

* * * * *

(c) * * *

(6) * * *

(vii) The method the State agency uses to count all work registrants as of the first day of the new fiscal year;

* * * * *

(xv) The combined (Federal/State) State agency reimbursement rate for transportation costs and other expenses reasonably necessary and directly related to participation incurred by E&T participants.

(xvi) Information about expenses the State agency proposes to reimburse. FNS must be afforded the opportunity to review and comment on the proposed reimbursements before they are implemented.

(7) A State agency interested in receiving additional funding for serving able-bodied adults without dependents (ABAWDs) subject to the 3-month time limit, in accordance with paragraph (d)(3) of this section, must include in its annual E&T plan:

(i) Its pledge to offer a qualifying activity to all at-risk ABAWD applicants and recipients;

(ii) Estimated costs of fulfilling its pledge;

(iii) A description of management controls in place to meet pledge requirements;

(iv) A discussion of its capacity and ability to serve at-risk ABAWDs;

(v) Information about the size and special needs of its ABAWD population; and

(vi) Information about the education, training, and workfare components it will offer to meet the ABAWD work requirement.

* * * * *

(9) The State agency will submit an E&T Program Activity Report to FNS no later than 45 days after the end of each Federal fiscal quarter. The report will contain monthly figures for:

(i) Participants newly work registered;

(ii) Number of ABAWD applicants and recipients participating in qualifying components;

(iii) Number of all other applicants and recipients (including ABAWDs involved in non-qualifying activities) participating in components; and

(iv) ABAWDs subject to the 3-month time limit imposed in accordance with § 273.24(b) who are exempt under the State agency's 15 percent exemption allowance under § 273.24(g).

(10) The State agency will submit annually, on its first quarterly report, the number of work registrants in the State on October 1 of the new fiscal year.

(11) The State agency will submit annually, on its final quarterly report, a list of E&T components it offered during the fiscal year and the number of ABAWDs and non-ABAWDs who participated in each.

* * * * *

(d) * * *

(1) * * *

(i) *Allocation of grants.* Each State agency will receive a Federal E&T program grant each fiscal year to operate an E&T program in accordance with paragraph (e) of this section. The grant requires no State matching.

(A) In determining each State agency's 100 percent Federal E&T grant, FNS will apply the percentage determined in accordance with paragraph (d)(1)(i)(B) of this section to the total amount of 100 percent Federal funds authorized under section 16(h)(1)(A) of the Act for each fiscal year.

(B) FNS will allocate the funding available each fiscal year for E&T grants using a formula designed to ensure that each State agency receives its appropriate share.

(*1*) One-half of the annual 100 percent Federal E&T grant will be calculated based on the number of ABAWDs in each State who do not reside in an area subject to a waiver granted in accordance with § 273.24(f) or who are not included in each State agency's 15 percent ABAWD exemption allowance under § 273.24(g), as a percentage of such ABAWDs nationwide. FNS will consider all waivers granted in accordance with § 273.24(f) within a reasonable time before the E&T allocations are determined. FNS will utilize the best data available for the waiver and exemption adjustments. FNS will determine each State agency's percentage of ABAWDs using the most recent Quality Control (QC) survey data adjusted for changes in its caseload.

(*2*) One-half of the grant will be allocated based on the number of work registrants in each State as a percentage of work registrants nationwide. FNS will use work registrant data reported by each State agency on the FNS–583, Employment and Training Program Activity Report, from the most recent Federal fiscal year.

(C) No State agency will receive less than $50,000 in Federal E&T funds. To ensure this, FNS will, if necessary, reduce the grant of each State agency allocated more than $50,000. In order to guarantee an equitable reduction, FNS will calculate grants as follows. First, disregarding those State agencies scheduled to receive less than $50,000, FNS will calculate each remaining State agency's percentage share of the fiscal year's E&T grant. Next, FNS will multiply the grant—less $50,000 for every State agency under the minimum—by each remaining State agency's same percentage share to arrive at the revised amount. The difference between the original and the revised amounts will represent each State agency's contribution. FNS will distribute the funds from the reduction to State agencies initially allocated less than $50,000.

(D) If a State agency will not obligate or expend all of the funds allocated to it for a fiscal year under paragraph (d)(1)(i)(B) of this section, FNS will reallocate the unobligated, unexpended funds to other State agencies during the fiscal year or the subsequent fiscal year on a first come-first served basis. Each year FNS will notify State agencies of the availability of carryover funding. Interested State agencies must submit their requests for carryover funding to FNS. If the requests are determined reasonable and necessary, FNS will allocate carryover funding to meet some or all of the State agencies' requests, as it considers appropriate and equitable.

The factors that FNS will consider when reviewing a State agency's request will include the size of the request relative to the level of the State agency's E&T spending in prior years, the specificity of the State agency's plan for spending carryover funds, and the quality of program and scope of impact for the State's E&T program and proposed use of carryover funds.

* * * * *

(3) *Additional allocations.* In addition to the E&T program grants discussed in paragraph (d)(1) of this section, FNS will allocate $20 million in Federal funds each fiscal year to State agencies that ensure availability of education, training, or workfare opportunities that permit ABAWDs to remain eligible beyond the 3-month time limit.

(i) To be eligible, a State agency must make and comply with a commitment, or ''pledge,'' to use these additional funds to defray the cost of offering a position in an education, training, or workfare component that fulfills the ABAWD work requirement, as defined in § 273.24(a), to each applicant and recipient who is:

(A) In the last month of the 3-month time limit described in § 273.24(b);

(B) Not eligible for an exception to the 3-month time limit under § 273.24(c);

(C) Not a resident of an area of the State granted a waiver of the 3-month time limit under § 273.24(f); and

(D) Not included in each State agency's 15 percent ABAWD exemption allotment under § 273.24(g).

(ii) While a participating pledge State may use a portion of the additional funding to provide E&T services to ABAWDs who do not meet the criteria discussed in paragraph (d)(3)(i) of this section, it must guarantee that the ABAWDs who do meet the criteria are provided the opportunity to remain eligible.

(iii) State agencies will have one opportunity each fiscal year to take the pledge described in paragraph (d)(3)(i) of this section. An interested State agency, in its E&T Plan for the upcoming fiscal year, must include the following:

(A) A request to be considered as a pledge State, along with its commitment to comply with the requirements of paragraph (d)(3)(i) of this section;

(B) The estimated costs of complying with its pledge;

(C) A description of management controls it has established to meet the requirements of the pledge;

(D) A discussion of its capacity and ability to serve vulnerable ABAWDs;

(E) Information about the size and special needs of the State's ABAWD population; and

(F) Information about the education, training, and workfare components that it will offer to allow ABAWDs to remain eligible.

(iv) If the information provided in accordance with paragraph (d)(3)(iii) of this section clearly indicates that the State agency will be unable to fulfill its commitment, FNS may require the State agency to address its deficiencies before it is allowed to participate as a pledge State.

(v) If the State agency does not address its deficiencies by October 1 it will not be allowed to participate as a pledge State.

(vi) No pledges will be accepted after the beginning of the new fiscal year on October 1.

(vii) (A) Once FNS determines how many State agencies will participate as pledge States in the upcoming fiscal year, it will, as early in the fiscal year as possible, allocate among them the $20 million based on the number of ABAWDs in each participating State who do not reside in an area subject to a waiver granted in accordance with § 273.24(f) or who are not included in each State agency's 15 percent ABAWD exemption allowance under § 273.24(g), as a percentage of such ABAWDs in the participating States. FNS will determine each participating State agency's percentage of ABAWDs using the most recent Quality Control (QC) survey data adjusted for changes in its caseload.

(B) Each participating State agency's share of the $20 million will be disbursed in accordance with paragraph (d)(6) of this section.

(C) Each participating State agency must meet the fiscal recordkeeping and reporting requirements of paragraph (d)(7) of this section.

(viii) If a participating State agency notifies FNS that it will not obligate or expend its entire share of the additional funding allocated to it for a fiscal year, FNS will reallocate the unobligated, unexpended funds to other participating State agencies during the fiscal year, as it considers appropriate and equitable, on a first come-first served basis. FNS will notify other pledge States of the availability of additional funding. To qualify, a pledge State must have already obligated its entire annual 100 percent Federal E&T grant, excluding an amount that is proportionate to the number of months remaining in the fiscal year, and it must guarantee in writing that it intends to obligate its entire grant by the end of the fiscal year. A State's annual 100 percent Federal E&T grant is its share of the regular 100 percent Federal E&T allocation plus its share of the additional $20 million (if applicable). Interested pledge States must submit their requests for additional funding to FNS. FNS will review the requests and, if they are determined reasonable and necessary, will reallocate some or all of the unobligated, unspent ABAWD funds.

(ix) Unlike the funds allocated in accordance with paragraph (d)(1) of this section, the additional pledge funding will not remain available until obligated or expended. Unobligated funds from this grant must be returned to the U.S. Treasury at the end of each fiscal year.

(x) If a participating State agency fails, without good cause, to meet its commitment to make available education, training, and workfare opportunities that permit all its at-risk ABAWDs to remain eligible beyond the 3-month time limit it may be disqualified from participating in the subsequent fiscal year or years.

(4) * * * The Federal government will fund 50 percent of State agency payments for allowable expenses, except that Federal matching for dependent care expenses is limited to the maximum amount specified in paragraph (d)(4)(i) of this section. * * *

* * * * *

(j) * * *

(3) * * *

(iii) * * * If the individual reduces his or her work hours to less than 30 a week, but continues to earn weekly wages that exceed the Federal minimum wage multiplied by 30 hours, the individual remains exempt from Program work requirements, in accordance with paragraph (b)(1)(vii) of this section, and the reduction in work effort provision does not apply.

* * * * *

Dated: March 12, 2004.

Eric M. Bost,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 04–6184 Filed 3–18–04; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1730

RIN 0572–AB92

Electric System Emergency Restoration Plan

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend its regulations on Electric System Operations and Maintenance to

establish policy requiring electric program distribution, generation and transmission borrowers to expand a currently established Emergency Restoration Plan (ERP), or, if no ERP is currently established, to create an ERP. The ERP shall detail how the borrower will restore its system in the event of a system wide outage resulting from a major natural or man made disaster or other causes. The ERP shall include preventative measures and procedures for emergency recovery from physical and cyber attacks to borrower's electric systems and core businesses, and shall also address Homeland Security concerns. This additional requirement is not entirely new to borrowers as RUS has recommended similar ''plans'' in the past. Both RUS Bulletin 60–7 and RUS Bulletin 1730–1 provided language addressing the security of RUS borrowers' electric systems.

DATES: Written comments must be received by RUS or carry a postmark or equivalent no later than May 3, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: *RUSComments@usda.gov.* Include in the subject line of the message ''Electric System Emergency Restoration Plan.'' The e-mail must identify, in the text of the message, the name of the individual (and name of the entity, if applicable) who is submitting the comment.
- Mail: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U. S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1522, Washington, D.C. 20250–1522.
- Hand Delivery/Courier: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW., Room 5168–S, Washington, D.C. 20250–1522 RUS requires, in hard copy, a signed original and 3 copies of all written comments (7 CFR 1700.4). Comments will be available for public inspection during normal business hours (7 CFR part 1).

FOR FURTHER INFORMATION CONTACT: John B. Pavek, Chief, Distribution Branch, Rural Utilities Service, Electric Program, Room 1256 South Building, Stop 1569, 1400 Independence Ave., SW., Washington, DC 20250–1569, Telephone: 202–720–5082, FAX: 202–720–7491, E-mail: *John.Pavek@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule-related notice titled ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034) advising that rural electrification loans and loan guarantees are excluded from the scope of Executive Order 12372.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule, and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912 (e)), administrative appeals procedures, if any are required, must be exhausted before an action against the Department or its agencies may be initiated.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications to require preparation of a Federalism Assessment.

Regulatory Flexibility Act Certification

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Rural Utilities Service is not required by 5 U.S.C. 551 *et seq.* or any other provision of the law to publish a notice of proposed rulemaking with request to the subject matter of this rule.

Information Collection and Recordkeeping Requirements

This rule contains no additional information collection or recordkeeping requirements under OMB control number 0572–0025 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Unfunded Mandates

This proposed rule contains no Federal mandates (under the regulatory provision of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. Chapter 25)) for State, local, and tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Background

Electric power systems have been identified in Presidential Decision Directive (PDD–63) as one of the critical infrastructures of the United States. The term ''critical infrastructure'' is defined in section 1016(e) of the USA Patriot Act of 2001 (42 U.S.C. 5195c(e)) as ''systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.'' The United States electric power system consists of the generation of energy and the transmission and distribution of energy (collectively comprising the electric grid). The other critical infrastructures identified in PDD–63 are all dependant to some degree upon the electric power system. Damage to or loss of critical or significant parts of the U.S. electric power system can cause enormous damage to the environment, loss of life, economic loss and can affect the national security of the United States.

Such damage or loss can be caused by an act of nature or an act by man, ranging from an accident to an act of terrorism. Of particular concern are physical and cyber threats from terrorists.

Protecting America's critical infrastructure is the shared responsibility of Federal, state, and local government, in active partnership with the private sector. Homeland Security Presidential Directive /Hspd-7 established a national policy for Federal departments and agencies to identify and prioritize United States critical infrastructure and key resources and to protect them from terrorist attacks. The Department of Homeland Security's Directorate of Information Analysis and Infrastructure Protection (IAIP) is the lead organization in coordinating the national effort to secure the nation's critical infrastructure. This IAIP function will give state, local, and private entities one primary contact instead of many for coordinating protection activities within the Federal government, including vulnerability assessments, strategic planning efforts, and exercises. RUS and, most importantly, RUS electric borrowers must be diligently proactive in electric infrastructure security.

RUS is uniquely coupled with the electric infrastructure of rural America and its electric borrowers serving rural America. A substantial portion of the electric infrastructure of the United States resides in, and is maintained by, rural America. To ensure that the electric infrastructure in rural America is adequately protected, RUS is instituting the requirement that all electric borrowers conduct a vulnerability and risk assessment of their respective systems and utilize the results of this assessment to enhance a current ERP or, if none exists, develop and maintain an ERP. Prior to approving any RUS grant, loan or loan guarantee, borrowers will have to demonstrate that they have an ERP.

The vulnerability and risk assessment is utilized to identify assets and infrastructure owned or served by the electric utility, determine the criticality and risk level associated with such assets and infrastructure, identify threats, depict vulnerabilities, if any, review existing mitigation procedures, assist in the development of new and additional mitigation procedures, if necessary, and perform a risk versus cost analysis. The ERP will provide written procedures detailing response and restoration efforts in the event of a major system outage resulting from a natural or man made disaster. An annual Exercise of the ERP will ensure operability, employee competency and serve to identify and correct deficiencies in the existing ERP. For the purpose of this regulation, ''Exercise'' means a borrower's tabletop execution of, or actual implementation of, the ERP to verify the operability of the ERP. Such Exercise may be implemented singly by an individual borrower or, as a participant in a multi-party (State, County, utility or combination thereof) tabletop execution or actual implementation of the ERP. For the purpose of this regulation, ''Tabletop'' means a hypothetical emergency response scenario in which participants will identify the policy, communication, resources, data, coordination, and organizational elements associated with an emergency response. The Exercise must, at a minimum, verify:

1. Operability of alert and notification systems;
2. Efficacy of plan;
3. Employee competency of procedures;
4. Points of contact (POC) of key personnel, both internally and externally; and
5. Contact numbers of POC.

List of Subjects in 7 CFR Part 1730

Electric power, Loan programs-energy, Reporting and recordkeeping requirement, Rural areas.

For the reasons set forth in the preamble, chapter XVII of title 7 of the Code of Federal Regulations, RUS proposes to amend part 1730 as follows:

PART 1730—ELECTRIC SYSTEM OPERATIONS AND MAINTENANCE

1. The authority citation for part 1730 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

Subpart B—Operations and Maintenance Requirements

2. Section 1730.20 is revised to read as follows:

§ 1730.20 General.

Each distribution borrower and power supply borrower shall operate and maintain its system in compliance with prudent utility practice, in compliance with its loan documents, and in compliance with all applicable laws, regulations and orders, shall maintain its systems in good repair, working order and condition, and shall make all needed repairs, renewals, replacements, alterations, additions, betterments and improvements, in accordance with applicable provisions of the borrower's security instrument. Each borrower is responsible for on-going operations and maintenance programs, performing a system security vulnerability and risk assessment, establishing and maintaining an Emergency Restoration Plan (ERP), maintaining records of the physical and electrical condition and security of its electric system and for the quality of services provided to its customers. The borrower is also responsible for all necessary inspections and tests of the component parts of its system, and for maintaining records of such inspections and tests. Each borrower shall budget sufficient resources to operate and maintain its system and annually exercise its ERP in accordance with the requirements of this part. For portions of the borrower's system that are not operated by the borrower, if any, the borrower is responsible for ensuring that the operator is operating and maintaining the system properly in accordance with the operating agreement.

3. Section 1730.21 is amended by:

a. Revising paragraph (a) and

b. Adding to the end of the first sentence in paragraph (c), ''or has been determined as a critical component of national security.''

The revision reads as follows:

§ 1730.21 Inspections and tests.

(a) Each borrower shall conduct all necessary inspections and tests of the component parts of its electric system, annually exercise its emergency restoration plan, and maintain adequate records of such inspections and tests. ''Exercise'' means a borrower's Tabletop execution of, or actual implementation of, the ERP to verify the operability of the ERP. Such Exercise may be implemented singly by an individual borrower or, as a participant in a multi-party (State, County, utility or combination thereof) Tabletop execution or actual implementation of the ERP. ''Tabletop'' means a hypothetical emergency response scenario in which participants will identify the policy, communication, resources, data, coordination, and organizational elements associated with an emergency response.

* * * * *

4. Section 1730.22 is amended by revising paragraph (a) and paragraph (b) introductory text to read as follows:

§ 1730.22 Borrower analysis.

(a) Each borrower shall periodically analyze and document its security, operations and maintenance policies, practices, and procedures to determine if they are appropriate and if they are being followed. The records of inspections and tests are also to be reviewed and analyzed to identify any

trends which could indicate deterioration in the physical condition or the operational effectiveness of the system or suggest a need for changes in security, operations or maintenance policies, practices and procedures. For portions of the borrower's system that are not operated by the borrower, if any, the borrower's written analysis would also include a review of the operator's performance under the operating agreement.

(b) When a borrower's security, operations and maintenance policies, practices, and procedures are to be reviewed and evaluated by RUS, the borrower shall:

* * * * *

5. Section 1730.26 is amended by:

a. Revising the section title;

b. Designating the text as paragraph (a) and adding a paragraph heading; and

c. Adding a new paragraph (b).

This redesignation and addition are to read as follows:

§ 1730.26 Certification.

(a) *Engineer's certification.* * * *

(b) *Emergency Restoration Plan certification.* If the self-certification of an ERP and vulnerability and risk assessment are not received prior to completion of the loan approval process, approval of the loan will not be considered until the certifications are received by RUS.

5. Sections 1730.27 and 1730.28 are added to read as follow:

§ 1730.27 Vulnerability and risk assessment.

(a) Each borrower shall perform an initial and periodic vulnerability and risk assessment of its electric system and maintain adequate records of such assessments.

(b) The borrower vulnerability and risk assessment is to be utilized by the borrower to assist in identifying critical facilities and business operational assets, the exposure of these identified facilities and assets to harm via natural or manmade acts, and methods or methodology to mitigate the exposure to harm.

(c) The vulnerability and risk assessment shall include, but not be limited to, identifying:

(1) Critical assets or infrastructure served by the borrowers' electric system that are identified as elements of national security;

(2) Critical asset components and elements unique to the RUS borrowers system;

(3) External system impacts (interdependency) with loss of identified system components;

(4) Threats to facilities and assets identified in paragraphs (c)(1) or (2) of this section; and

(5) Criticality and risk level of the borrowers system.

§ 1730.28 Emergency Restoration Plan (ERP).

(a) Each borrower shall have a written ERP. The ERP should be developed by the borrower through the borrower's unique knowledge of its system, prudent utility practices and the borrower's completed vulnerability and risk assessment. The ERP shall include, but not be limited to:

(1) A list of key contact emergency numbers (emergency agencies, borrower management and other key personnel, contractors and equipment suppliers, other utilities, and others that might need to be reached in an emergency);

(2) A list of key utility management and other personnel and identification of a chain of command and delegation of authority and responsibility during an emergency;

(3) Procedures for recovery from loss of power to the headquarters, key offices, and/or operation center facilities.

(4) A Business Continuity Section describing a plan to maintain or re-establish business operations following an event which disrupts business systems (computer, financial, and other business systems).

(b) The ERP must be approved and signed by the borrower's manager or chief executive officer and approved by the Board of Directors, as applicable.

(c) Copies of the most recent approved ERP must be made readily available to key personnel at all times.

(d) The ERP shall be Exercised at least annually to ensure operability and employee familiarity.

(e) If modifications are made to an existing ERP:

(1) The modified ERP must be prepared in compliance with the provisions of paragraphs (b) and (c) of this section; and

(2) Additional Exercises will be necessary to maintain employee operability and familiarity.

(f) Each borrower shall maintain records of such Exercises.

Dated: March 8, 2004.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 04–6167 Filed 3–18–04; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA–2003–16137; Airspace Docket 03–ANM–07]

Proposed Revision of Class E Airspace; Lexington, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal would revise the Class E. airspace at Lexington, OR. New Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) makes this proposal necessary. Additional Class E airspace extending upward from 700 feet or more above the surface of the earth is necessary for the safety of IFR aircraft executing the new RNAV GPS SIAPs at Lexington Airport, Lexington, OR.

DATES: Comments must be received by May 3, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket, FAA–2003–16137; Airspace Docket 03–ANM–07, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone number 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Office of the Regional Air Traffic Division, Northwest Mountain Region, Federal Aviation Administration, Airspace Branch ANM–520, 1601 Lind Avenue, SW., Renton, WA 98055.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory

decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify Docket No. FAA 2003–16137; Airspace Docket 03–ANM–07, and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket FAA 2003–16137; Airspace Docket 03–ANM–07.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access/gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Airspace Branch ANM–520, 1601 Lind Avenue, SW., Renton, WA 98055. Communications must identify both document numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

The Proposal

This action amends title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Lexington, OR, New RNAV GPS SIAPs makes this proposal necessary. Additional Class E airspace extending upward from 700 feet or more above the surface of the earth is necessary for the safety of IFR aircraft executing the new RNAV GPS SIAPs at Lexington Airport, Lexington, OR.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM OR E5 Lexington, OR [Revised]

Lexington Airport, Lexington, OR
(Lat 45°27′15″N., long. 119°41′25″W.)

That airspace extending upward from 700 feet above the surface of the earth within a 7.0 mile radius of the Lexington Airport; that airspace extending upward from 1200 feet above the surface of the earth beginning at lat. 45°14′00″ N., long. 119°33′00″ W.; to lat. 45°39′26″ N., long. 121°08′59″ W.; to lat. 45°48′00″ N., long. 121°06′30″ W.; to lat. 45°38′52″ N., long. 120°09′00″ W.; to lat. 45°36′12″ N., long. 119°45′28″ W.; to lat. 45°43′09″ N., long. 119°11′57″ W.; to lat. 45°31′26″ N., long. 119°06′04″ W.; thence to the beginning; excluding that airspace within Federal airways.

* * * * *

Issued in Seattle, Washington, on February 27, 2004.

Raul C. Treviño,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 04–6153 Filed 3–18–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA 2004–17000; Airspace Docket 02–ANM–06]

Proposed Establishment of Class E Airspace; Aspen, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal would establish Class E airspace at Aspen, CO. A reduction in operating hours of Class D service located at Aspen-Pitkin County/Sardy Field, has made this action necessary. Additional Class E airspace will provide a controlled environment for the safety of aircraft executing Instrument Flight Rules (IFR) operations at Aspen-Pitkin County/Sardy Field, Aspen, CO, outside the Class D service.

DATES: Comments must be received on or before May 3, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number, FAA 2004–17000; Airspace Docket 02–ANM–06, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office, 1–800–647–5527, is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Office of the Regional Air Traffic Division, Northwest Mountain Region, Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue, SW., Renton, WA 98055.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify Docket FAA–2004–17000; Airspace Docket 02–ANM–06, and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket FAA–2004–17000; Airspace Docket 02–ANM–06.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Airspace Branch ANM–520, 1601 Lind Avenue, SW., Renton, WA 98055. Communications must identify both document numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, at (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by establishing Class E airspace extending upward from the surface of the earth at Aspen-Pitkin County/Sardy Field, Aspen, CO. A reduction in hours of Class D service has made this amendment necessary. This action will establish Class E airspace extending upward from the surface of the earth for the safety of aircraft executing IFR operations outside the hours of Class D service. Class E airspace will be effective during specified dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be published in the Airport/Facility Directory.

Class E airspace areas designated as surface areas, are published in Paragraph 6002, of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (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 11013; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6002 Class E airspace designated as surface area for an airport.

* * * * *

ANM OR E2 Aspen, CO [Added]

Aspen-Pitken County/Sardy Field

(lat. 39°13′23″N., long. 106°52′08″W.)

Within a 4.3-mile radius of Aspen-Pitkin County/Sardy Field. This Class E airspace is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on February 27, 2004.

Raul C. Treviño,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 04–6154 Filed 3–18–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–156232–03]

RIN 1545–BC80

Information Reporting Relating to Taxable Stock Transactions; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing under section 6043(c) requiring information reporting by a corporation if control of the corporation is acquired or if the corporation has a recapitalization or other substantial change in capital structure.

DATES: The public hearing originally scheduled for March 31, 2004, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Robin R. Jones of the Publications and Regulations Branch, Legal Processing Division at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Tuesday, December 30, 2003 (68 FR 75182), announced that a public hearing was scheduled for March 31, 2004, at 10 a.m., in the IRS Auditorium. The subject of the public hearing is proposed regulations under section 6043 (c) of the Internal Revenue Code. The public comment period for these expired on March 10, 2004.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Tuesday, March 16, 2004, no one has requested to speak. Therefore, the public hearing scheduled for March 31, 2004, is cancelled.

LaNita Van Dyke,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

[FR Doc. 04–6221 Filed 3–18–04; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7638–1]

Hazardous Waste Management System; Proposed Exclusion for Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA (also, ''the Agency'' or ''we'' in this preamble) is proposing to grant a petition submitted by General Electric Company (GE), King of Prussia, Pennsylvania, to exclude (or ''delist''), on a one-time basis, certain solid wastes that have been deposited and/or accumulated in two (2) on-site drying beds and two (2) on-site basins referred to by GE as ''surface impoundments'' at its RCA del Caribe facility in Barceloneta, Puerto Rico from the lists of hazardous wastes contained in the regulations. These drying beds and basins were used exclusively for disposal of its chemical etching wastewater treatment plant (WWTP) sludge from 1971 to 1978.

The Agency has tentatively decided to grant the petition based on an evaluation of waste-specific information provided by GE. This proposed decision, if finalized, would conditionally exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, the EPA would conclude that GE's petitioned waste is nonhazardous with respect to the original listing criteria or factors which could cause the waste to be hazardous. The waste would still be subject to Local, State (as used herein the term State includes the Commonwealth of Puerto Rico) and Federal regulations for nonhazardous solid waste.

DATES: The Agency will accept public comments on this proposed decision until May 3, 2004. Comments postmarked after the close of the comment period will be stamped ''late.'' These ''late'' comments may not be considered in formulating a final decision.

Any person may request a hearing on this proposed rule by filing a written request by April 5, 2004. Pursuant to 40 CFR 260.20(d), the request must state the issue to be raised and explain why written comments would not suffice to communicate the person's views.

ADDRESSES: Please send two copies of your comments to Ernst J. Jabouin, RCRA Program Branch (2DEPP–RPB), Environmental Protection Agency, Region 2, 290 Broadway, New York, NY 10007–1866.

Any person may request a hearing on this proposed decision by filing a request to the Director, of the Division of Environmental Planning and Protection (DEPP), Environmental Protection Agency, Region 2, 290 Broadway, New York, NY 10007–1866.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, contact Ernst J. Jabouin at the address above or at 212–637–4104. The RCRA regulatory docket for this proposed rule is located at the EPA Region 2, 290 Broadway, New York, NY 10007–1866, and is available for viewing from 8 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. Call Ernst J. Jabouin at 212–637–4104 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

SUPPLEMENTARY INFORMATION:

I. Overview Information
- A. What action is EPA proposing?
- B. Why is EPA proposing to approve this delisting?
- C. How will GE manage the waste if it is delisted?
- D. When would EPA finalize the proposed delisting?
- E. How would this action affect the states?

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- A. What is the history of the delisting program?
- B. What is a delisting petition, and what does it require of a petitioner?
- C. What factors must EPA consider in deciding whether to grant a delisting petition?

III. EPA's Evaluation of the Waste Information and Data
- A. What wastes did GE petition EPA to delist?
- B. What information and analyses did GE submit to support this petition?
- C. How did GE generate the petitioned waste?
- D. How did GE sample and analyze the data in this petition?
- E. What were the results of GE's analysis?

IV. Methodology for Risk Assessments
- A. How did EPA evaluate the risk of delisting this waste?
- B. What risk assessment methods has the Agency used in previous delisting determinations that are being used in this proposal?

V. Evaluation of This Petition
- A. What other factors did EPA consider in its evaluation?
- B. What did EPA conclude about GE's analysis?
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- A. What are the maximum allowable concentrations of hazardous constituents for the waste?
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VII. Regulatory Impact
VIII. Regulatory Flexibility Act
IX. Paperwork Reduction Act
X. Unfunded Mandates Reform Act
XI. Executive Order 12875
XII. Executive Order 13045
XIII. Executive Order 13084
XIV. Executive Order 13132
XV. National Technology Transfer and Advancement Act

I. Overview Information

A. What Action Is EPA Proposing?

The EPA is proposing to grant GE's petition to have its wastewater treatment sludge excluded, or delisted, from the definition of a hazardous waste. The Agency evaluated the petition using a fate and transport model to predict the concentration of hazardous constituents which could be released from the petitioned waste after it is disposed.

B. Why Is EPA Proposing To Approve This Delisting?

GE petitioned EPA to exclude, or delist, the wastewater treatment sludge because GE believes that the petitioned waste does not meet the criteria for which EPA listed it. GE also believes there are no additional constituents or factors that could cause the wastes to be hazardous. Based on EPA's review described below, the Agency has tentatively determined that the waste can be considered nonhazardous.

In reviewing this petition, EPA considered the original listing criteria and the additional factors as required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(2) through (4). EPA evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (3).

The Agency also evaluated the waste for other factors including (1) the toxicity of the constituents; (2) the concentration of the constituents in the waste; (3) the tendency of the hazardous constituents to migrate and to bioaccumulate; (4) persistence in the environment of any constituents released from the waste; (5) plausible and specific types of management of the petitioned waste; (6) the quantity of waste produced; and (7) waste variability.

EPA believes that the petitioned waste does not meet the criteria for which the waste was listed, and has tentatively decided to delist this waste from the former RCA del Caribe Facility.

C. How Will GE Manage the Waste If It Is Delisted?

If the petitioned waste is delisted, GE must dispose of it in a Subtitle D landfill which is permitted, licensed, or registered by a state (as used herein includes the Commonwealth of Puerto Rico) to manage industrial waste. This exclusion does not change the regulatory status of the drying beds and on-site basins at the facility in Barceloneta, Puerto Rico where the waste has been disposed.

D. When Would EPA Finalize the Proposed Delisting?

HSWA specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not make a final decision or grant an exclusion until it has addressed all timely public comments (including those at public hearings, if any) on today's proposal.

Since this rule would reduce the existing requirements for persons generating hazardous wastes, the regulated community does not need a six-month period to come into compliance in accordance with section 3010 of RCRA as amended by HSWA. Therefore, the exclusion would become effective upon finalization.

E. How Would This Action Affect the States?

Because EPA is issuing today's exclusion under the federal RCRA delisting program, only states subject to federal RCRA delisting provisions would be affected. This exclusion may not be effective in states having a dual system that includes federal RCRA requirements and their own requirements, or in states which have received authorization to make their own delisting decisions (note that the term ''State'' as used herein includes the Commonwealth of Puerto Rico).

Under section 3009 of RCRA, EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state.

Because a dual system (that is, both federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioner to contact the state regulatory authority to establish the status of its wastes under the state law.

EPA has also authorized some states to administer a delisting program in place of the federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states. If GE transports the petitioned waste to or manages the waste in any state with delisting authorization, GE must obtain a delisting from that state before it can manage the waste as nonhazardous in the state.

II. Background

A. What Is the History of the Delisting Program?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. The EPA has amended this list several times and published it in 40 CFR 261.31 and 261.32.

The Agency lists wastes as hazardous because: (1) they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in § 261.11(a)(2) or (3).

Individual waste streams may vary depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be.

For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows a person to demonstrate that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What Is a Delisting Petition, and What Does It Require of a Petitioner?

A delisting petition is a request from a facility to EPA or an authorized state to exclude waste generated at a particular facility from the list of hazardous wastes.

In a delisting petition, the petitioner must show the waste generated does not meet any of the criteria for listed wastes and does not exhibit any of the hazardous waste characteristics in 40 CFR part 261, subpart C. The criteria for which EPA lists a waste are in 40 CFR 261.11 and in the background documents. The petitioner must also present sufficient information to determine whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (*See* 40 CFR 260.22, 42 U.S.C. 6921(f) and the background documents for the listed wastes).

A generator remains obligated under RCRA to confirm that its waste remains nonhazardous based on the hazardous waste characteristics even if EPA has ''delisted'' the waste.

C. What Factors Must EPA Consider in Deciding Whether To Grant a Delisting Petition?

EPA must also consider as a hazardous waste, a mixture containing listed hazardous wastes and wastes derived from treating, storing, or disposing of a listed hazardous waste. *See* 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), called the ''mixture'' and ''derived-from'' rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded.

The ''mixture'' and ''derived-from'' rules are now final, after having been vacated, remanded, and reinstated.

III. EPA's Evaluation of the Waste Information and Data

A. What Wastes Did GE Petition EPA To Delist?

On November 20, 1997, GE petitioned EPA Region 2 to exclude an estimated volume of hazardous wastes ranging from 5,000 to 15,000 cubic yards from the list of hazardous wastes contained in 40 CFR 261.31. These wastes were generated and disposed of at GE's facility in Barceloneta, PR, formerly known as the RCA del Caribe facility. This facility is included on EPA's National Priority List and was the subject of a Superfund Remedial Investigation, Feasibility Study and Record of Decision. The wastes are described in GE's petition as EPA Hazardous Waste Number F006 wastewater treatment sludge that was generated from chemical etching operation and accumulated in two drying beds and two basins where the sludge mixed with soil. F006 is defined

as ''Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.'' The constituents of concern for which F006 is listed are cadmium, hexavalent chromium, nickel and complexed cyanide.

B. What Information and Analyses Did GE Submit To Support This Petition?

To support its petition, GE submitted (1) descriptions and schematic diagrams of its manufacturing and wastewater treatment processes, including historical information on past waste generation and management practices; (2) detailed chemical and physical analysis of the sludge (*see* section III.D.); and (3) environmental monitoring data from past and recent studies of the facility, including groundwater data from wells located around the two drying beds and two basins. GE submitted a signed certification of accuracy and responsibility statement set forth in 40 CFR 260.22(i)(12). By this certification, GE attests that all submitted information is true, accurate and complete.

C. How Did GE Generate the Petitioned Waste?

According to information submitted by GE, the RCA del Caribe, Inc. Barceloneta facility began generating wastewater treatment sludge from its chemical etching operation in 1971 until the plant ceased operations in April 1987. During that time, the facility manufactured aperture (or shadow) masks for television picture tubes. A shadow mask is a specially prepared, paper thin, carbon steel screen used in cathode ray tubes to direct the electron beam to the television screen. The shadow masks were manufactured using a photolithographic/chemical etching process with the photolithographic step to establish locations of holes and slots and the chemical etching step to produce the desired holes and slots. During the process thin sheets of carbon steel which contained a thin layer of grease to protect the metal from corrosion and rusting were rinsed with tap water, detergent, caustic cleaning solution (sodium hydroxide), and deionized water. Rinses generated from this process were directed to the wastewater treatment plant. Then, a photoresist solution or glazing glue composed of casein, potassium or ammonium dichromate and a disinfectant (Borax) was baked to the surface of the clean sheet of steel. Once this process known as sensitizing is performed, the sheet was exposed to Ultra violet (UV) light to photographically develop the mask pattern. Developing or rinsing the UV exposed sheets with deionized water to remove unexposed photoresist solution from the sheets to exposed bare portions to be etched upon application of a wetting agent and oven-drying the sheet. These wastewaters, which contained unreacted photoresist solution, were directed to the wastewater treatment plant and were a source of chromium (from chromium dichromate) for the influent to the treatment plant and the resulting sludge. A mixture of hydrochloric acid and ferric chloride was used to chemically etch holes and slots in unprotected steel sheet portions. During the reaction, ferric ion (Fe^{+3}) reacted with metallic ion (Fe^{+0}) to produce ferrous ion (Fe^{+2}) as follows:

$$2\ Fe^{+3} + Fe^{+0} \Rightarrow 3\ Fe^{+2}$$

Spent ferric chloride etching solution was recovered for reuse in a closed-loop system. Final rinsing followed the etching process. Rinsed water from this step contained chromium, ferric chloride, and ferrous chloride and were directed to the wastewater treatment plant.

The manufacturing process contributed to a chromium-reducing environment such that hexavalent chromium, or Cr(VI) would normally be reduced to trivalent chromium, or Cr(III). Because the etching solution was recovered and recycled in a closed loop system, it accumulated excess ferrous ions which were periodically converted elsewhere in the loop system to ferric ion by adding chloride.

$$3\ Fe^{+2} + 3/2\ Cl_2 \Rightarrow 3\ Fe^{+3} + 3\ Cl$$

However, for safety reasons, the regeneration was not allowed to go to completion. Excess chlorine in the etching solution would have evolved into hazardous chlorine gas. Therefore, some residual ferrous ion was always left in the regenerated solution. The ramification is that at low pH, the Eh (redox potential) of a solution containing both ferrous and ferric ions lies within a narrow range in which Cr (III) is stable, and Cr(VI) is not. Thus, any chromium in the excess etchant solution was trivalent, not hexavalent.

All the wastewaters described above were blended prior to treatment. This results in reduction of hexavalent chromium to trivalent chromium species. The combined stream was pumped to the wastewater treatment plant where it was treated with caustic soda to effect precipitation of metals, chiefly ferric dioxide. A polymer was added to the metal in a clarifier. Clarified effluent flowed by gravity into a permitted natural sinkhole while the sludge underflow was discharged by gravity to two on-site sludge drying beds and two basins referred to by GE as ''surface impoundments'' (SI).

D. How Did GE Sample and Analyze the Data in This Petition?

GE analyzed the drying beds sludge, basins sludge, basins soil and groundwater samples from the monitoring well network for hazardous constituents listed in 40 CFR part 264, appendix IX and for other parameters.

GE's sampling strategy for contaminants consisted of dividing each drying beds and each basin surface area into four equal quadrants. Composite samples were collected from each quadrant. Each composite sample within that quadrant was composed of samples from five shallow borings and five grab samples for the surface composite samples. The borings and composite grab samples were located at the center and five to fifteen feet from the center (toward the corner), of each quadrant. Each boring sample was collected by making a composite of the entire thickness of the sludge representing the total depth of the unit sampled. The grab samples were collected from the surface to 0.5 feet. Contaminated soil around the basins were sampled in a fashion similar to what is described above for both surface and borings soil samples. The Agency evaluated the petitioned waste using these samples in combination with data from the Remedial Investigation.

To quantify the total constituent and leachate concentrations, GE used the Contract Laboratory Program Scope of Work, (CLP SOW, April 1990) and SW–846 Methods 6010/7000 series: for arsenic, barium, cadmium, chromium, hexavalent chromium, lead, mercury, nickel, selenium, and silver; 8240 for Appendix IX Volatile Organic Compounds (VOCs); 8270 for Appendix IX Semi-Volatile Organic Compounds (SVOCs); GE used these methods along with the Toxicity Characteristic Leaching Procedure (TCLP), (SW–846 Method 1311) to determine leachate concentrations of metals, VOCs, and SVOCs. Characteristic testing of soil and sludge samples also included analysis of ignitability (SW–846 Method 1010) and corrosivity (SW–846 Method 9095).

E. What Were the Results of GE's Analysis?

The maximum total and leachate concentrations for toxicity characteristic metals and nickel, total cyanide in GE's

waste samples are summarized in Table 1. Since none of the sludge samples failed for toxicity, no soil samples were subjected to TCLP leachate analysis. Also, there was no detection of significant concentrations of organics in either the soil or the sludge when analyzed for ''Appendix 9 constituents.'' As a result, neither the sludge nor the soil were subjected to TCLP organic analysis. EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with the petition binds the petitioner to present truthful and accurate results.

TABLE 1

	Maximum observed total concentration (mg/kg)			Maximum observed Leachate concentration (mg/L TCLP)	
	Sludge drying beds	Sludge SI basins	Soil around basins	Sludge drying beds	Sludge SI basins
Arsenic	17.4J	27.4	91.0	0.022	ND
Barium	21.1	38.6	140	0.432	0.716
Cadmium	ND	1.2	3.0	ND	ND
Chromium	5360	8400	4370	0.157	ND
Lead	ND	677J	94.3J	ND	ND
Mercury	1.1J	1.6	0.49	ND	ND
Nickel	43.3J	94J	64.4J	0.0214	ND
Selenium	0.30J	ND	0.61J	ND	ND
Silver	26.4J	0.66	22.1	ND	ND
Cyanide	ND	46.5	ND	ND	ND

Note: ND=Not Detected
J=value is an estimated quantity.

IV. Methodology for Risk Assessments

A. How Did EPA Evaluate the Risk of Delisting This Waste?

For this delisting determination, EPA used information gathered to identify plausible exposure routes (*i.e.,* groundwater, surface water, air) to hazardous constituents present in the petitioned waste. EPA estimated the risk posed by the waste if disposed of in an unlined Subtitle D landfill which, under a plausible mismanagement scenario, did not receive daily cover for 30 days at a time. Constituents of concern are assumed to migrate to a receptor through groundwater, air, and surface water routes. EPA used a Windows based software tool, the Delisting Risk Assessment Software Program (DRAS) developed by Region 6, to estimate the potential releases of waste constituents and to predict the risk associated with those releases. A detailed description of DRAS and the fate, transport and risk models it uses follows.

1. Introduction

During a delisting determination, the Agency uses risk assessment methodologies to predict the concentration of hazardous constituents released from the petitioned waste after disposal to determine the potential impact on human health and the environment. The DRAS program has been used to estimate the potential releases of waste constituents to waste management units. The program also predicts the risk associated with exposure to those releases using fate and transport mechanisms to predict releases and risk assessment algorithms to estimate adverse effects from exposure to those chemical releases. The DRAS computes chemical-specific exit values or ''delisting levels.'' The delisting levels are calculated using modeled, medium-specific chemical concentrations and standard EPA exposure assessment and risk characterization algorithms. EPA detailed all chemical release, exposure, and risk characterization methodologies in the EPA Region 6 RCRA delisting Technical Support Document.

The Agency has used the maximum estimated annual waste volume and the maximum reported leachate and total waste constituent concentrations as the input data into the DRAS program to generate compliance point concentrations and estimate risk. The compliance point is the location of an individual exposed to potential releases of delisted wastes for the purpose of evaluating risk. Compliance point concentrations are generated in a two-part process. First, the DRAS back-calculates a waste constituent concentration that an individual (receptor) may be exposed to without unacceptable risk. Then, knowing the maximum concentration permitted at the compliance point, the fate and transport models are used to back-calculate the maximum permissible concentration at the waste management unit that could be disposed of without exceeding the compliance point concentration.

The risk assessment performed by the DRAS program which underlies the proposed rule is based upon a comprehensive approach to evaluating the movement of waste constituents from their waste management units, through different routes of exposure or pathways, to the points where human and ecological receptors are potentially exposed to these constituents. This risk assessment is being used in today's proposed rule to determine whether the petitioned RCRA listed waste can be defined as ''low-risk'' waste, able to exit the Subtitle C system and be managed in Subtitle D units. Low risk wastes are generally defined by Region 2 as wastes with a cancer risk of no more than 1×10^{-6} or a hazard quotient of no more than 1.0. A cancer risk of 1×10^{-6} indicates a one in 1,000,000 probability of an individual developing cancer over a lifetime. For noncarcinogenic chemicals, a hazard quotient of one represents potential exposure equal to the safe toxicity threshold value. The program back-calculates allowable waste constituent concentrations at the selected risk levels.

Although the pathway of ingestion of contaminated groundwater may be appropriate to propose exit levels for some wastes and constituents, it may not be protective for others, depending on the physical and chemical properties of each waste constituent. Some constituents have a high potential to bioaccumulate or bioconcentrate in living organisms. Pathways in which

these constituents come in contact with fish would be important to evaluate.

The DRAS program performs an extensive risk assessment that examines numerous exposure pathways, rather than just the groundwater ingestion pathway. The DRAS program evaluates exposures associated with managing wastes in Subtitle D landfills or surface impoundments. Elements of the risk assessment procedure performed by the DRAS that support this proposal have undergone review by the Science Advisory Board (SAB) and EPA's Office of Research and Development (ORD). The use of the Composite Model for leachate migration with Transformation Products (CMTP) as used in the DRAS was favorably received by the SAB. ORD reviewed all other aspects of the DRAS program and responded favorably with comments. All ORD comments were addressed and incorporated into the DRAS program.

2. What Conditions Does the Agency Use in Determining Whether a Waste May Be Delisted?

The EPA's approach in RCRA delisting risk analyses has typically been to represent a reasonable worst-case waste disposal scenario for the petitioned waste rather than use of site-specific factors. The Agency believes that a reasonable worst-case scenario results in conservative values for the compliance point concentrations and is appropriate when determining whether a waste should be relieved of the management constraints of RCRA Subtitle C. Site-specific factors (*e.g.,* site hydrogeology) are not considered because a delisted waste is no longer subject to hazardous waste control, and therefore, the Agency is generally unable to predict and does not control where and how a waste will be managed after delisting. However, the Agency may impose conditions for exclusion so that the delisted waste is still managed in a manner that is protective of human health and the environment (refer to section VI.B. of this preamble).

3. How Is the Risk Assessment in the DRAS Program Structured?

The assessment estimated the risk associated with constituent-specific concentrations in the petitioned waste at the management unit that could be expected to result in an acceptable exposure to human or ecological receptors (determined through using the toxicity benchmarks such as reference doses—RfDs). The risk assessment took into account the various pathways by which waste constituents may move through the environment from the waste management unit to a receptor. The DRAS uses the fate and transport mechanisms to predict waste constituent movement. The potential exposure pathways considered in the assessment are not all-inclusive, but were selected to reflect those that might be commonly associated with the management of wastes in Subtitle D units. The management units could potentially be located in the range of environments that exist across the United States. Various environments have differing characteristics (*e.g.,* meteorological conditions, soil type) with some environments more conducive for the movement of certain constituents in certain pathways. Conditions resulting in a conservative evaluation were used for each pathway, regardless of whether or not these conditions are likely to occur simultaneously at any one location. The assessment was structured using a deterministic approach. A deterministic approach uses a single, point estimate of the value of each input or parameter and calculates a single result based on those point estimates. The assessment used the best data available to select typical (*i.e.,* approximately 50th percentile) and high-end (*i.e.,* approximately 90th percentile) values for each parameter. The DRAS code which performs the assessment is constructed as a set of calculations that begin with an acceptable exposure level for a constituent to a receptor, and back-calculates to a waste constituent concentration in the management unit that corresponds to the acceptable risk level.

The steps of the assessment which provide estimates of acceptable constituent-specific concentrations in waste include the following:

Step 1—Specify acceptable risk levels for each constituent and each receptor.

Step 2—Specify the exposure medium. Using the toxicity benchmarks as a starting point and the exposure equations, the assessment back calculates the concentration of contaminant in the medium (*e.g.,* air, water, soil) that corresponds to ''acceptable'' exposure at the specified risk level. The exposure equations coded into the DRAS software include a quantitative description of how a receptor comes into contact with the contaminant and how much the receptor takes in through specific mechanisms (*e.g.,* ingestion, inhalation, dermal adsorption) over some specified period of time.

Step 3—Calculate the point of release concentration from the exposure concentration. Based on the back-calculated concentration in the exposure medium (from Step 2), the concentration in the medium to which the contaminant is released to the environment (*i.e.,* air, soil, groundwater) for each pathway/receptor was modeled. The end result of this calculation is a waste constituent concentration at the point of release from the waste management unit (where the exempted waste is disposed) that will not result in adverse effects to human health and the environment.

4. When Assessing the Risk of the Exempted Waste, Where Does the DRAS Assume the Waste is Deposited?

The DRAS risk assessment evaluates risks associated with petitioned RCRA wastes deposited to two waste management scenarios: landfills and surface impoundments. A landfill waste management scenario is used for the evaluation of solid wastes, while a surface impoundment waste management scenario is used for the evaluation of liquid wastes. The determination of whether a waste is a liquid waste is made using EPA approved Test Method 9095, referred to as the Paint Filter Test. Data to characterize landfills were obtained from a 1987 nationwide survey of industrial Subtitle D landfills. For releases to groundwater, EPA's Composite Model for leachate migration with Transformation Products (EPACMTP) fate and transport model was used by DRAS. The model assumes that solid wastes remain uncovered for thirty days after disposal and that the landfill will finally be covered with a 2-foot-thick native soil layer. The Subtitle D landfill is assumed to be unlined or if lined, that any liner at the base of the landfill will eventually completely fail.

The DRAS assumes that liquid industrial wastes are disposed of in an unlined surface impoundment with a sludge or sediment layer at the base of the impoundment and that releases of contaminants originate from the surface impoundment. The surface impoundment is taken to have a 20-year operational life. After this period, the impoundment may be filled in, or simply abandoned. In either case, the remaining waste in the impoundment will leach into the unsaturated zone relatively quickly. Therefore, the duration of the leaching period in the modeling analysis is set equal to 20-years.

5. What Types of Chemical Releases From the Waste Management Units Does the DRAS Evaluate?

The DRAS evaluates chemical releases of waste constituents from the waste management units to air, surface runoff and ground water. Using the

EPACMTP fate and transport model, DRAS evaluates the potential release of waste contaminants to the ground water. In this evaluation, the differences between waste management units are represented by different values or frequency distributions of the source-specific parameters. Source-specific parameters used by the EPACMTP predict releases to the ground water from landfills include:

Capacity and dimensions of the waste management unit;
Leachate concentration;
Infiltration and recharge rates;
Pulse duration;
Fraction of hazardous waste in the waste management unit;
Density of the waste and;
Concentration of the chemical constituent in the hazardous waste

The source-specific parameters used by the model for surface impoundments include:

The area;
The ponding depth (such as the depth of liquid in the impoundment) and;
The thickness and hydraulic conductivity of the sludge or sediment layer at the bottom of the impoundment

Data on the areas, volumes, and locations of waste management units were obtained from the 1987 EPA Survey of Industrial Subtitle D waste facilities in the United States. Derivation of the parameters for each type of waste management unit is described in the EPACMTP Background Document and User's Guide.

For finite-source scenarios, simulations are performed for transient conditions, and the source is assumed to be a pulse of finite duration. In the case of landfills, the pulse duration is based on the initial amount of contaminant in the landfill, infiltration rate, landfill dimensions, waste and leachate concentration, and waste density. For surface impoundments, the duration of the leaching period is determined by the waste management unit's lifetime (the default value is 20 years). For a finite-source scenario, the model can calculate either the peak receptor well concentration for noncarcinogens or an average concentration over a specified period for carcinogens. The finite-source methodology in the EPACMTP is discussed in detail in the background document.

The DRAS evaluates releases of waste constituents from the waste management to the air. Releases of chemicals to the air may be in the form of either particulates or volatile concentrations. Inhalation of particulates and their absorption into the lungs at the point of exposure (POE) and air deposition of particulates and subsequent ingestion of the soil-waste mixture at the POE are a function of particulate releases. The DRAS calculates particulate emissions resulting from wind erosion of soil-waste surfaces, from vehicular traffic, and from waste loading and unloading. To estimate the respirable particulate emissions resulting from wind erosion of surfaces with an infinite source of erodible particles, DRAS uses the methodology documented in Rapid Assessment of Exposure to Particulate Emissions from Surface Contamination Sites (RAEPE). The methodologies documented in Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources (AP–42) were employed to calculate the dust and particulate emissions resulting both from vehicular traffic and from waste loading and unloading operations at a facility.

Particulate emission rates computed using these methodologies were summed and entered in the Ambient Air Dispersion Model, a steady-state, Gaussian plume dispersion model developed by EPA to predict the concentrations of constituents 1,000 feet downwind of a hypothetical land disposal facility. For a complete description and discussion, refer to the 1985 Ambient Air Dispersion Model (AADM). The model assumes that:

(1) The emission rate is constant over time;
(2) The emissions arise from an upwind virtual point source with emissions occurring at ground level and;
(3) No atmospheric destruction or decay of the constituent occurs

The DRAS assumes typical or conservative values for all variables that are likely to influence the potential for soil erosion, including wind velocity and vegetative cover. The AADM unit dimension assumptions were modified to more closely resemble a landfill's. The DRAS equations compute emissions resulting from wind erosion, vehicular traffic, and waste loading and unloading. These equations are thoroughly described in the Region 6 delisting Technical Support Document. For the landfill waste disposal scenario, the DRAS assumed that no vegetative cover is present, thereby assuming enhanced erodability of soil or waste. The mean annual wind speed is assumed to be 4 meters per second. This value represents the average of the wind speeds registered at U.S. climatological stations as documented in Table 4–1 of RAEPE. The DRAS assumes a month's (30 days') worth of waste would be uncovered at any one time.

Although particulates greater than 10 micrometers (um) in size generally are not considered respirable, the DRAS calculates the emission rate for particle sizes up to 30um in order to assess the potential impact of deposition and ingestion of such particulates using the distributions of wind-eroded particulates presented in RAEPE. Specifically, these distributions indicate that the release rate for particulates up to 30 um in size should be approximately twice the release rate calculated for particulates 10 um in size. The DRAS calculates the total annual average emissions of respirable particulates by summing for wind erosion, for vehicle travel, and for waste loading and unloading operations. The DRAS evaluates air deposition of the annual total emissions of particulates less than or equal to 30 um in size to soil 1,000 feet from the edge of a disposal unit. DRAS calculates the resulting soil concentration after one year of accumulation, conservatively assuming no constituent removal (no leaching, volatilization, soil erosion, or degradation).

The DRAS also evaluates the atmospheric transport and inhalation of volatile constituents which was developed by EPA's Office of Air Quality Planning and Standards (OAQPS) and has been recommended for use in risk assessments conducted under the Superfund program. The DRAS program, is currently being revised to incorporate Shen's modification of Farmer's equation which will result in a better estimate of volatile emissions. Estimates of emissions of VOCs from disposal of wastewaters in surface impoundments are computed with EPA's Surface Impoundment Modeling System (SIMS). SIMS was developed by EPA's OAQPS. Further information can be found in the Background Document for the Surface Impoundment Modeling System Version 2.0. The volatile emission rates derived from the respective waste management scenario are used by the AADM steady-state Gaussian plume dispersion model to predict the concentrations of constituents 1,000 feet downwind of a hypothetical disposal facility.

The DRAS evaluates potential releases of waste constituents to accessible surface waters. Exposure through the surface water pathway results from erosion of hazardous materials from the surface of a solid waste landfill and transport of these constituents to nearby surface water bodies. The DRAS uses the universal soil loss equation (USLE) to compute long-term soil and waste

erosion from a landfill in which delisted waste has been disposed. The USLE is used to calculate the amount of waste that will be eroded from the landfill. In addition, the size of the landfill is computed using the waste volume estimate provided by the petitioner. The volume of surface water into which runoff occurs is determined by estimating the expected size of the stream into which the soil is likely to enter. The amount of soil delivered to surface water is calculated using a sediment delivery ratio. The sediment delivery ratio determines the percentage of eroded material that is delivered to surface water based on the assumption that some eroded material will be redeposited between the landfill and the surface water body. A distance of 100 meters (m) to the nearest surface water body is assumed. The DRAS program as used here is currently being revised to account for partitioning between water and suspended solids when the eroded waste enters the stream. Rainfall erosion factor values range from 20 to 550 per year. Values greater than 300 occur in only a small proportion of the southeastern United States. A value of 300 was chosen as a conservative estimate ensuring that a reasonable worst-case scenario is provided for most possible landfill locations. Soil erodibility factors range from 0.1 to 0.69 ton per acre. A value of 0.3 was selected for the analysis, which is estimated to exceed 66% of all values assuming a normal distribution. One month's worth of waste is assumed to be left uncovered at any one time and thus would be readily transportable by surface water runoff. Other variables used by the DRAS to evaluate releases to surface waters employed conservative assumptions. DRAS multiply the total annual mass of eroded material by the sediment delivery ratio to determine the mass of soil and waste delivered to surface water.

The predicted erosion capacity is gradually diluted as it mixes with nearby surface waters. DRAS selects a representative volume or flux rate of surface water based on stream order, which is a system of taxonomy for streams and rivers. A stream that has no other streams flowing into it is referred to as a first-order stream. Where two first-order streams converge, a second-order stream is created. Where two second-order streams converge, a third-order stream is created. Data indicate that second-order streams have an estimated flow rate of 3.7 cubic feet per second. The second-order stream was selected for analysis as the smallest stream capable of supporting recreational fishing. Fifth-order streams were also chosen for analysis as the smallest streams capable of serving as community water supplies. Fifth-order stream flow is estimated to be 380 cubic feet per second.

6. By What Means May an Individual Be Exposed to the Proposed Exempted Waste?

An exposure scenario is a combination of exposure pathways through which a single receptor may be exposed to a waste constituent. Receptors may be human or other animal in an ecosystem. There are many potential exposure scenarios. The DRAS evaluated the risks of the proposed waste associated with the exposure scenarios most likely to occur as a result of releases from the waste management unit. Receptors may come into contact with delisted waste constituent releases from a waste management unit via two primary exposure routes, either (1) directly via inhalation or ingestion of water or (2) indirectly via subsequent ingestion of soil and foodstuffs (such as fish) that become contaminated by waste constituents through the food chain. Receptors may also be exposed to waste constituents released from a waste management unit to surface media (via volatilization to air or via windblown particulate matter) or to groundwater (via ingestion of groundwater). The exposure scenarios assessed by DRAS are generally conservative in nature and are not intended to be entirely representative of actual scenarios at all sites. Rather, they are intended to allow standardized and reproducible evaluation of risks across most sites and land use areas. Conservatism is incorporated to ensure protection of potential receptors not directly evaluated, such as special subpopulations. The recommended exposure scenarios and associated assumptions assessed by DRAS are reasonable and conservative and they represent a scientifically sound approach that allows protection of human health and the environment.

7. What Receptors Are Assessed for Risk From Exposure to the Proposed Exempted Waste?

Adult and child residents are the two receptors evaluated in this analysis. The adult resident exposure scenario is evaluated to account for the combination of exposure pathways to which an adult receptor may be exposed in an urban or rural (nonfarm) setting. The adult resident is assumed to be exposed to waste constituents from an emission source through the following exposure pathways:

(1) Direct inhalation of vapors and particles;
(2) Ingestion of fish;
(3) Ingestion of drinking water from surface water sources;
(4) Ingestion of drinking water from groundwater sources;
(5) Dermal absorption from groundwater sources via bathing;
(6) Inhalation from groundwater sources via showering

DRAS evaluates two exposure pathways for children: (1) dermal absorption while bathing with potentially contaminated groundwater and (2) the ingestion of soil containing contaminated particulates which have been emitted from the landfill and deposited on the soil. Child residents (1 to 6 years old) were not selected as receptors for the groundwater ingestion and inhalation pathways, the surface water pathways, or the direct air inhalation pathways because the adult resident receptor scenario has been found to be protective of children with regard to these pathways. There is no indication that children consume more drinking water or inhale more air per unit of body weight, factoring in the recognized exposure duration, than adults. Therefore, average daily exposure normalized to body weight would be identical for adults and children. Likewise, a child receptor was not included for the freshwater fish ingestion pathway because there is no evidence that children consume more fish relative to their body weight, factoring in exposure duration, than do adults. The dermal absorption while bathing with groundwater exposure pathway is evaluated differently for child residents than it is for adult residents because of the following considerations: (1) The ratio of exposed skin surface area to body weight is slightly higher for children than for adults, resulting in a slightly larger average daily exposure for children than for adults; and (2) the exposure duration for such children is limited to 6 years, thus lowering the lifetime average exposure to carcinogens. Typically, the adult scenario is more protective with regard to carcinogens (because of the longer exposure duration), and the child scenario is more protective with regard to noncarcinogens (because of the greater skin surface area to body weight ratio).

8. Where Does the DRAS Assume That Receptors Are Located When Performing the Risk Evaluation?

The EPACMTP, a probabilistic groundwater fate and transport model, was used to predict groundwater constituent concentrations at a

hypothetical receptor well located downgradient from a waste management unit. This receptor well represents the POE. That is, the predicted waste constituent concentration at the POE is used to assess the risk of the proposed exempted waste. The distance to the well is based on the results of the 1987 nationwide survey of landfills conducted by EPA's Office of Solid Waste (OSW) which determined the distance to the nearest drinking water well downgradient from municipal landfills. The survey data are entered in the EPACMTP model as an empirical distribution: minimum = 0 m, median = 427 m, and maximum = 1,610 m (approximately 1 mile). In contrast to the 1990 Toxicity Characteristic (TC) Rule (55 FR 11798), there is no requirement that the well lie within the leachate plume.

For carcinogenic waste constituents, the exposure concentration is defined as the maximum 30 year average receptor well concentration; for noncarcinogens, the exposure concentration is taken to be the highest receptor well concentration during the modeled 10,000 year period. A 10,000 year limit was imposed on the exposure period; that is, the calculated exposure concentration is the peak or highest 30 year average concentration occurring within 10,000 years following the initial release from the waste management unit. The fate and transport simulation within the CMTP provided a probability distribution of receptor well concentrations as a function of expected leachate concentration. Using the receptor well concentrations as a function of the waste constituent concentration, the EPACMTP derived chemical-specific dilution attenuation factors (DAFs) which convert a leachate concentration in the landfill to a groundwater concentration at the receptor well.

Human exposure routes for surface water include ingestion of surface water used as drinking water and ingestion of fish from nearby surface water bodies. For the surface water ingestion exposure route, the surface water POE modeled is a fifth-order stream 100 m from the waste management unit. Fifth-order streams were chosen for analysis because EPA assumes that a fifth-order stream is the smallest stream capable of serving as a community water supply. The assumption of a 100 m distance to the nearest surface water body is a conservative assumption based on available data. An EPA survey of municipal landfill facilities showed that 3.6 percent of the surveyed facilities are located within 1 mile of a river or stream and that the average distance from these facilities to the closest river or stream is 586 m (1,921 feet). For the fish ingestion exposure route, a second-order stream was chosen for analysis. This stream segment was determined to be the smallest stream capable of supporting fisheries. The POE in the surface water body for collection of fish is assumed to be 100 m downgradient from the disposal facility. Human exposure to emissions of windblown particulates from landfills and to emissions of volatiles from landfills and surface impoundments is assessed by the DRAS. For the air pathway, the DRAS assumes the POE is 305 m (1,000 feet) downwind of the waste management unit.

9. How Does DRAS Determine Rates of Exposure?

The calculation of constituent-specific exposure rates for each exposure pathway evaluated were based on:

(1) The estimated concentration in a given medium as calculated in DRAS;
(2) The contact rate;
(3) Receptor body weight, and;
(4) The frequency and duration of exposure

This calculation is repeated for each constituent and for each exposure pathway included in an exposure scenario. Exposure to hazardous constituents is assumed to occur over a period of time. To calculate an average exposure per unit of time, the DRAS divides the total exposure by the time period. Exposures are intended to represent reasonable maximum exposure (RME) estimates for each applicable exposure route. The RME approach is intended to combine upper-bound and mid-range exposure factors so that the result represents an exposure scenario that is both protective and reasonable, not the worst possible case.

10. What Rate of Contact With a Contaminated Media Does the DRAS Use?

The contact rate is the amount of contaminated medium contacted per unit of time or event. Contact rates for subsistence food types (fish for the fish ingestion pathway) are assumed to be 100 percent from the hypothetical assessment area (surface water body). The following sections describe exposure pathway-specific contact rates.

11. What Are the Contact Rates at Which Individuals Are Exposed to Contaminated Media?

For groundwater and surface water ingestion, the intake rate is assumed to be 2.0 liters per day (l/day), the average amount of water that an adult ingests. This value, which is currently used to set drinking water standards, is close to the current 90th percentile value for adult drinking water ingestion (2.3 l/day) reported in the EPA Exposure Factors Handbook. This value approximates the 8 glasses of water per day historically recommended by health authorities. The contact for the dermal exposure pathway is assumed to occur while bathing with contaminated groundwater. In this analysis, the DRAS assumes that the average adult resident is in contact with groundwater during bathing for 0.25 hour per event and that the average child resident is in contact with groundwater during bathing for 0.33 hour per event, with one event per day. For dermal bathing exposure to contaminated groundwater, the selected receptors are an adult and a young child (1 to 6 years old). During bathing, generally all of the skin surface is exposed to water. The total adult body surface area can vary from about 17,000 to 23,000 square centimeters (cm^2). The EPA Exposure Factors Handbook (EFH) reports a value of 20,000 cm^2 as the median value for adult skin surface area. A value of 6,900 cm^2 has been commonly used for a child receptor in EPA risk assessments; this value is approximately the average of the median values for male children aged 2 to 6. The EFH presents a range of recommended values for estimates of the skin surface area of children by age. The mean skin surface area at the median for boys and girls 5 to 6 years of age is 0.79 square meters (m^2) or 7,900 cm^2. Given that the age for children is defined as 0 to 6 years (see EFH Section 3.3.4), a skin surface area value for ages 5 to 6 years would be a conservative estimate of skin surface area for children. For calculation of dermal exposure to waste constituents, the DRAS uses a value of 7,900 cm^2 for the skin surface area of children and a value of 20,000 cm^2 for the skin surface area of adults.

For the groundwater pathway of inhalation exposure during showering, the contact with water is assumed to occur principally in the shower and in the bathroom. The DRAS analysis assumes that the average adult resident spends 11.4 minutes per day in the shower and an additional 48.6 minutes per day in the bathroom. Daily inhalation rates vary depending on activity, gender, age, and so on. Citing a need for additional research, the EFH does not recommend a reasonable upper-bound inhalation rate value. The EFH recommended value for the average inhalation rate is 15.2 cubic meters per day (m^3) for males and 11.3 m^3 day for females. The EPA established an upper-

bound value for an individual's inhalation rate at 20 m^3 day which has been commonly used in past EPA risk assessments. This value is used by the DRAS for assessment of inhalation exposure.

The DRAS assesses the ingestion of soil contaminated with air-deposited particulates from a nearby landfill. The potential for exposure to constituents via soil ingestion is greater for children because they are more likely to ingest more soil than adults as a result of behavioral patterns present during childhood. Therefore, exposure to waste constituents through ingestion of contaminated soils is evaluated for the child in a delisting risk assessment. The mean soil ingestion values for children range from 39 to 271 milligrams per day (mg/day), with an average of 146 mg/day for soil ingestion and 191 mg/day for soil and dust ingestion (see EPA EFH). Based on the EFH statement that 200 mg/day may be used as a conservative estimate of the mean, the DRAS uses 200 mg/day as the soil ingestion rate for children.

Fish consumption rates vary greatly, depending on geographic region and social or cultural factors. The recommended value for fish consumption for all fish is 0.28 grams of fish per kilogram body weight per day for an average adult (see EPA EFH). This value equates with a fish consumption rate of 20.1 grams per day (g/day) for all fish. The DRAS estimated that an exposed individual eats 20 g of fish per day, representing one 8-ounce serving of fish approximately once every 11 days.

12. At What Frequency Does the DRAS Assume That Receptors Are Exposed to Contaminated Media?

An exposure frequency of 350 days per year is applied to all exposure scenarios (see EPA EFH). Until better data become available, the common assumption that residents take 2 weeks of vacation per year is used to support a value of 15 days per year spent away from home, leaving 350 days per year spent at home and susceptible to exposure.

13. For What Duration Does the DRAS Assume Receptors Are Exposed to Contaminated Media?

The exposure duration reflects the length of time that an exposed individual may be expected to reside near the constituent source. For the adult resident, this value is taken to be 30 years, and for the child resident, this value is taken to be 6 years (see EPA EFH). The adult resident is assumed to live in one house for 30 years, the approximate average of the 90th percentile residence times from two key population mobility studies. For the child resident, the exposure duration is assumed to be 6 years, the maximum age of the young child receptor. For carcinogens, exposures are combined for children (6 years) and adults (24 years). For noncarcinogenic constituents, the averaging time (AT) equals the exposure duration in years multiplied by 365 days per year. For an adult receptor, the exposure duration is 30 years, and for a child receptor, the exposure duration is 6 years. For carcinogenic constituents, the AT has typically been 25,550 days, based on a lifetime exposure of 70 years at 365 days per year. The life expectancy value in the EFH is 75 years. Given this life expectancy value, the AT for a delisting risk assessment is 27,375 days, based on a lifetime exposure of 75 years at 365 days per year.

14. What Body Weights Are Assumed for Receptors in the DRAS Evaluation?

Risk Assessment Guidance for Superfund defines the body weight of the receptor as either adult weight (70 kilograms (kg)) or child weight (1 to 6 years, 15 kg). The EFH recommended value of 71.8 kg for an adult differs from the 70-kg value commonly used in EPA risk assessments. In keeping with the latest EFH recommendation, the DRAS used a 72-kg adult weight and a 15-kg child weight for the proposed delisting determination.

B. What Risk Assessment Methods Has the Agency Used in Previous Delisting Determinations That Are Being Revised in This Proposal?

1. Introduction

The fate and transport of constituents in leachate from the bottom of the waste unit through the unsaturated zone and to a drinking water well in the saturated zone was previously estimated using the EPA Composite Model for Landfill (EPACML) (*See* 55 FR 11798). The EPACML accounts for:

One-dimensional steady and uniform advective flow;

Contaminant dispersion in the longitudinal, lateral, and vertical directions;

Sorption.

However, advances in groundwater fate and transport have been made in recent years and the Agency proposes the use of a more advanced groundwater fate and transport model for RCRA exclusions.

2. What Fate and Transport Model Does the Agency Use in the DRAS for Evaluating the Risks to Groundwater From the Proposed Exempted Waste?

The Agency proposes to use the EPACMTP in this delisting determination. The EPACMTP considers the subsurface fate and transport of chemical constituents. The EPACMTP is capable of simulating the fate and transport of dissolved contaminants from a point of release at the base of a waste management unit, through the unsaturated zone and underlying groundwater, to a receptor well at an arbitrary downstream location in the aquifer. The model accounts for the following mechanisms affecting contaminant migration: transport by advection and dispersion, retardation resulting from reversible linear or nonlinear equilibrium adsorption onto the soil and aquifer solid phase, and biochemical degradation processes.

3. Why Is the EPACMTP Fate and Transport Model an Improvement Over the EPACML?

The modeling approach used for this proposed rulemaking includes three major categories of enhancements over the EPACML. The enhancements include:

(1) Incorporation of additional fate and transport processes (*e.g.,* degradation of chemical constituents);
(2) Use of enhanced flow and transport solution algorithms and techniques (*e.g.,* three-dimensional transport) and;
(3) Revision of the probabilistic methodology (*e.g.,* site-based implementation of available input data).

A discussion of the key enhancements which have been implemented in the EPACMTP is presented here and the details are provided in the proposed 1995 Hazardous Waste Identification Rule (HWIR) background documents (60 FR 66344–December 21, 1995).

The EPACML was limited to conditions of uniform groundwater flow. It could not handle accurately the conditions of significant groundwater mounding and non-uniform groundwater flow due to a high rate of infiltration from the waste units. These conditions increase the transverse horizontal as well as the vertical spreading of a contaminant plume. The EPACMTP accounts for these effects directly by simulating groundwater flow in the vertical as well as horizontal directions.

The EPACMTP can simulate fate and transport of metals, taking into account geochemical influences on the mobility

of metals. The EPA's MINTEQA2 metals speciation model is used to generate effective sorption isotherms for individual metals, corresponding to a range of geochemical conditions. The transport modules in EPACMTP have been enhanced to incorporate the nonlinear MINTEQ sorption isotherms. This enhancement provides the model with capability to simulate, in the unsaturated and in the saturated zones, the impact of pH, leachate organic matter, natural organic matter, iron hydroxide and the presence of other ions in the groundwater on the mobility of metals. The saturated zone module implemented in the EPACML was based on a Gaussian distribution of concentration of a chemical constituent in the saturated zone. The module also used an approximation to account for the initial mixing of the contaminant entering at the water table underneath the waste unit. The approximate nature of this mixing factor could sometimes lead to unrealistic values of contaminant concentration in the groundwater close to the waste unit, especially in cases of a high infiltration rate from the waste unit. The enhanced model incorporates a direct linkage between the unsaturated zone and saturated zone modules which overcomes these limitations of the EPACML.

To enable a greater flexibility and range of conditions that can be modeled, the analytical saturated zone transport module has been replaced with a numerical module, based on the highly efficient state-of-the-art Laplace Transform Galerkin (LTG) technique. The enhanced module can simulate the anisotropic, non-uniform groundwater flow, and transient, finite source, conditions. The latter requires the model to calculate a maximum receptor well concentration over a finite time horizon, rather than just the steady state concentration which was calculated by the EPACML. The saturated zone modules have been implemented to provide either a fully three-dimensional solution, or a highly efficient quasi-3D solution. The latter has been implemented for probabilistic applications and provides nearly the same accuracy as the fully three dimensional option, but is more computationally efficient. Both the unsaturated zone and the saturated zone transport modules can accommodate the formation and the transport of parent as well as of the transformation products.

A highly efficient semi-analytical unsaturated zone transport module has been incorporated to handle the transport of metals in the unsaturated zone and can use MINTEQA2 derived linear or nonlinear sorption isotherms. Conventional numerical solution techniques are inadequate to handle extremely nonlinear isotherms. An enhanced method-of-characteristic based solution has been implemented which overcomes these problems and thereby enables the simulation of metals transport in the probabilistic framework. Non-linearity in the metals sorption isotherms is primarily of concern at higher concentration values; for low concentrations, the isotherms are linear or close to linear. Because of the attenuation in the unsaturated zone, and the subsequent dilution in the saturated zone, concentrations in the saturated zone are usually low enough so that properly linearized isotherms are used by the model in the saturated zone without significant errors.

The internal routines in the model which determine placement of the receptor well relative to the areal extent of the contaminant plume have been revised and enhanced to eliminate bias which was present in the implementation in the EPACML. The calculation of the areal extent of the plume has been revised to take into consideration the dimensions of the waste unit. The logic for placing a receptor well inside the plume limits has been improved to eliminate a bias towards larger waste unit areas and to ensure that the placement of the well inside these limits, for a given radial distance from the unit, is truly randomly uniform. However, for this proposal, the closest drinking water well is located anywhere on the downgradient side of the waste unit.

The data sources from which parameter distributions for nationwide probabilistic assessments are obtained have been evaluated, and where appropriate, have been revised to make use of the latest data available for modeling. Leachate rates for Subtitle D waste units have been revised using the latest version of the Hydrologic Evaluation of Landfill Performance (HELP) model with the revised data inputs. Source specific input parameters (*e.g.*, waste unit area and volume) have been developed for various different types of industrial waste units besides landfills. Input values for the groundwater related parameters have been revised to utilize information from a nationwide industry survey of actual contaminated sites. The original version of the model was implemented for probabilistic assessments assuming continuous source (infinite source) conditions only. This methodology did not take into account the finite volume and/or operational life of waste units. The EPACMTP model has been implemented for probabilistic assessments of either continuous source or finite source scenarios. In the latter scenario, predicted groundwater impact is not only based on the concentrations of contaminants in the leachate, but also on the amount of constituent in the waste unit and/or the operational life of the unit.

The landfill is taken to be filled to capacity and covered when leaching begins. The time period during which the landfill is filled-up, usually assumed to be 20 years, is considered to be small relative to the time required to leach all of the constituent mass out of the landfill. The model simulation results indicate that this assumption is not unreasonable; the model calculated leaching duration is typically several hundred years. The leachate flux, or infiltration rate, is determined using the HELP model. The net infiltration rate is calculated using a water balance approach, which considers precipitation, evapo-transpiration, and surface run-off. The HELP model was used to calculate landfill infiltration rates for a representative Subtitle D landfill with 2-foot earthen cover, and no liner or leachate collection system, using climatic data from 97 climatic stations located throughout the US. These correspond to the reasonable worst case assumptions as explained in the HWIR Risk Assessment Background Document for the HWIR proposed notice (60 FR 66344—December 21, 1995). Additional details on the methodologies used by the EPACMTP to derive DAFs for waste constituents modeled for the landfill scenario are presented in the Background Documents for the proposed HWIR docket (60 FR 66344—December 21, 1995). The fraction of waste in the landfill is assigned a uniform distribution with lower and upper limits of 0.036 and 1.0, respectively, based on analysis of waste composition in Subtitle D landfills. The lower bound assures that the waste unit will always contains a minimum amount of the waste of concern. The waste density is assigned a value based on reported densities of hazardous waste, and varies between 0.7 and 2.1 grams per cubic centimeter (g/cm\3\).

The area of the surface impoundment and the impoundment depth used by the EPACMTP are obtained from the OSW Subtitle D Industrial Survey and were entered into the probabilistic analyses as distributions. The sediment layer at the base of the impoundment is taken to be 2 feet thick, and have an effective equivalent saturated conductivity of 10^{-7} centimeters per second (cm/s). These values were selected in recognition of the fact that

most non-hazardous waste surface impoundments do have some kind of liners in place. Additional details on the methodologies used by the EPACMTP to derive DAFs for waste constituents modeled for the surface impoundment waste management scenario are presented in the Background Documents for the 1995 proposed HWIR docket (60 FR 66344—December 21, 1995).

4. Has the EPACMTP Methodology Been Formally Reviewed?

The Science Advisory Board (SAB), a public advisory group that provides information and advice to the EPA, reviewed the EPACMTP model as part of a continuing effort to provide improvements in the development and external peer review of environmental regulatory models. Overall, the SAB commended the Agency for making significant enhancements to the EPACMTP's predecessor (EPACML) and for responding to previous SAB suggestions. The SAB also concluded that the mathematical formulation incorporating transformation or degradation products into the model appeared to be correct and that the site-based approach using hydrogeologic regions is superior to the previous approach used in EPACML. The model underwent public comment during the 1995 proposed HWIR (60 FR 66344—December 21, 1995).

5. Has the Agency Modified the EPACMTP as Utilized in the HWIR Proposal?

The EPACMTP, as developed for HWIR, determined the DAF using a probabilistic approach that selected, at random, a waste volume from a range of waste volumes identified in EPA's 1987 Subtitle D landfill survey. In delisting determinations, the waste volume of the petitioner is known. Therefore, application of EPACMTP to the delisting program has been modified to evaluate the specific waste volume. The Agency modified the DAFs determined under the HWIR proposal to account for a known waste volume. To generate waste volume-specific DAFs, EPA developed ''scaling factors'' to modify DAFs developed for HWIR (based on the entire range of disposal unit areas) to DAFs for delisting waste volumes. This was accomplished by computing a 90th percentile DAF for a conservative chemical for 10 specific waste volumes (ranging from 1,000 cu. yds. to 300,000 cu. yds.) for each waste management scenario (landfill and surface impoundment). The Agency assumed that DAFs for a specific waste volume are linearly related to DAFs developed by EPACMTP for the HWIR. DAF scaling factors were computed for the ten increment waste volumes. Using these ten scaling factor DAFs, regression equations were developed for each waste management scenario to provide a continuum of DAF scaling factors as a function of waste volume.

The regression equations are coded into the DRAS program which then automatically adjusts the DAF for the waste volume of the petitioner. The method used to verify the scaling factor approach is presented in Application of EPACMTP to Region 6 delisting Program: Development of Volume-adjusted Dilution Attenuation Factors. For the landfill waste management scenario, the DAF scaling factors ranged from 9.5 for 10,000 cu. yard to approximately 1.0 for waste volumes greater than 200,000 cu. yards. Therefore, for solid waste volumes greater than 200,000 cu. yds., the waste volume-specific DAF is the same as the DAF computed for the proposed HWIR. The regression equation that can be used to determine the DAF scaling factor (DSF) as a function of waste volume (in cubic yards) for the landfill waste management unit is: $DSF = 6152.7 \times (\text{waste volume})^{-0.7135}$. The correlation coefficient of this regression equation is 0.99, indicating a good fit of this line to the data points. DAF scaling factors for surface impoundment waste volumes ranged from 2.4 for 2,000 cu. yards to approximately 1.0 for 100,000 cu. yds. For liquid waste volumes greater than 200,000 cu. yds., the waste volume-specific DAF is the same as the DAF computed for the proposed HWIR. The regression equation for DSF as a function of waste volume for surface impoundment wastes is: $DSF = 14.2 \times (\text{waste volume})^{-0.2288}$. The correlation coefficient of this regression equation is also 0.99, indicating an extremely good fit of this line to the data points.

V. Evaluation of This Petition

A. What Other Factors Did EPA Consider in Its Evaluation?

We also consider the applicability of ground-water monitoring data during the evaluation of delisting petitions where the waste in question is or has ever been placed on land. In this case, the waste has been placed directly on soil or in contact with underlying clayey sand and limestone bedrock. A total of three groundwater sampling events has been conducted at the site from monitoring wells around the existing drying beds and basins which contain the waste and submitted to the Agency as part of the petition. Historical data showed sporadic detection of four inorganic constituents in the groundwater and indicated that the drying beds and basins waste was a possible source. However, a confirmation groundwater sampling event utilizing a more sophisticated EPA recommended sampling technique could not establish that hazardous substances were currently leaching from the drying beds and basins sludge as well as associated contaminated soil at levels exceeding those predicted by the EPACMTP model in the DRAS program. The evaluation was based on a statistical analysis conducted in accordance with Statistical Analysis of Ground-Water Monitoring Data at RCRA Facilities—Interim Final Guidance, EPA, April 1989 and Statistical Analysis of Ground-Water Monitoring Data at RCRA Facilities—Addendum to Interim Final Guidance, EPA, July 1992. Leachate analysis of sludge samples generally supported the conclusion that the beds and basins sludge was not currently a source of groundwater contamination above health-based levels.

Specifically, chromium, lead, mercury and nickel were sporadically detected in groundwater. However, the sludge did not appear to be leaching these constituents to groundwater. Chromium, lead, and mercury are present in background samples. The highest concentration of these constituents were found in a single sample described as ''brown, turbid.'' None of them were detected in the filtered portion of that same sample. Nickel contamination could not be attributed to the sludge and was detected in only one quarterly sampling event. Furthermore, using low flow method in a confirmatory sampling event to account for turbidity, except for mercury which was slightly above the health base level, nickel was not detected and chromium and lead were detected below the level of concern. Therefore, the analytical results of groundwater show that elevated levels of mercury, nickel, chromium and lead historically detected in the groundwater at the site are attributable to naturally-occurring trace elements in fine sediments.

B. What Did EPA Conclude About GE's Analysis?

The total cumulative risk posed by the waste, is approximately 3.66×10^{-6}. EPA believes that this risk is acceptable because the value is within a generally acceptable range of 1×10^{-4} to 1×10^{-6} and the estimated risk is associated with a single contaminant. Specifically, ingestion of carcinogenic arsenic in groundwater contributes 3.66×10^{-6}; the surface water pathway contributes 3.11×10^{-9}. Cadmium, the other

contributor to the total risk and included only as a detection limit, has no groundwater ingestion risk and its surface water pathway contributes only 5.51×10^{-15} to the total level of risk.

After reviewing GE's processes, the EPA concludes that (1) hazardous constituents of concern are present in GE's waste, but not at levels which are likely to pose a threat to human health and the environment when placed in a solid waste landfill; and (2) the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively.

C. What is EPA's Evaluation of This Delisting Petition?

The descriptions of the GE hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this document), provide a reasonable basis for EPA to grant the exclusion.

The Agency has reviewed the sampling procedures used by GE and have determined they satisfy EPA criteria for collecting representative samples of constituent concentrations in the wastewater treatment sludge.

EPA believes the data submitted in support of the petition show that GE's waste will not pose a threat when disposed of in a Subtitle D landfill regulated by a state. The Agency therefore, proposes to grant GE an exclusion for its WWTP sludge.

If EPA finalizes the proposed rule, the Agency will no longer regulate the petitioned waste under 40 CFR parts 262 through 268 and the permitting standards of part 270.

VI. Conditions for Exclusion

A. What Are the Maximum Allowable Concentrations of Hazardous Constituents in the Waste?

Table 2 below summarizes maximum observed TCLP concentrations in GE's waste, maximum allowable leachate levels for GE's waste, and the level of regulatory concern at the point of exposure for groundwater. The EPA calculated delisting levels for all constituents detected.

Maximum allowable leachate concentrations (expressed as a result of the TCLP test) were calculated for all constituents for which leachate was analyzed. The allowable leachate concentrations were derived from the health-based calculation within the DRAS program. Maximum allowable leachate levels were also derived from MCLs, SDWA Treatment Technique (TT) action levels, or toxicity characteristic levels from 40 CFR 261.24 if they resulted in a more conservative delisting level. The maximum allowable point of exposure groundwater concentrations correspond to the lesser of the health-based values calculated within the DRAS program or the MCLs or TT action levels.

A statistical review of some of the data indicates that the maximum values used in the modeling and risk estimation correspond to a very high confidence interval. Assuming that the distribution of the data is adequately defined, future samples are likely to exhibit concentrations which are less than the maximum values used in this evaluation. All of the maximum waste concentrations observed are less than the corresponding delisting levels assigned.

TABLE 2

	Maximum observed [1] leachate concentration (mg/l TCLP)		Maximum allowable leachate concentration (mg/l TCLP)	Maximum allowable point of exposure concentration (mg/l in groundwater)	Maximum allowable TCLP base on MCL mg/l
	Sludge drying beds	Sludge SI basins			
Arsenic	0.0221	ND(0.1)	0.0604	0.604	6.19
Barium	0.432	0.716	472	[2]358	359
Cadmium	ND	ND(0.01)	3.63	[2]0.965	0.967
Chromium	0.157	ND(0.01)	1400000	[2]2480	2480
Lead	ND	ND(0.085)	484	483	484
Mercury	ND	ND(0.0002)	0.219	[2]0.960	0.961
Nickel	0.0214	ND(0.04)	182	182	.....
Selenium	ND	ND(0.195)	14	[2]0.748	3.74
Silver	ND	ND(0.01)	24.8	24.8	.....
Cyanide	ND	ND(0.01)	87.1	[2]23.2	23.2

Note: ND=Not Detected (Detection Limit).
J=value is an estimated quantity.
[1]These levels represent the highest constituent concentration found in any one sample, not necessarily the specific levels found in one sample.
[2]The concentration is based on the MCL or TT action level.

In addition to the delisting values in the table, several delisting levels based on total concentrations were also established for GE's waste. Table 3 below summarizes maximum observed total concentrations in GE's waste, maximum allowable total levels for GE's waste. In all cases, the observed levels were below allowable levels.

TABLE 3

	Maximum observed total concentration (mg/kg)			Maximum allowable total concentration mg/kg
	Sludge drying beds	Sludge SI basins	Soil around basins	
Arsenic	17.4J	27.4	91.0	91000
Barium	21.1	38.6	140	20600000
Cadmium	ND	1.2	3.0	771000

TABLE 3—Continued

	Maximum observed total concentration (mg/kg)			Maximum allowable total concentration mg/kg
	Sludge drying beds	Sludge SI basins	Soil around basins	
Chromium	5360	8400	4370	2310000000
Lead	R	677J	15.5/94.3J	541000
Mercury	1.1J	1.6	0.49	80
Nickel	*10.8/43.3J*	43.5/94J	64.4J	30800000
Selenium	0.30J	0.66	0.55/0.61J	7710000
Silver	26.4J	46.5	22.1	7710000
Cyanide	R	ND	ND	30800000

Note: ND=Not Detected (Detection Limit).
J=value is an estimated quantity.
R=rejected.

B. What Are the Conditions of the Exclusion?

The proposed exclusion only applies to the approximately five to fifteen thousand cubic yards of sludge and contaminated soil described in the petition. Any amount exceeding this volume cannot be considered delisted under this exclusion. Furthermore, GE must dispose of this sludge in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste.

GE must also complete additional verification sampling in order to ensure that the landfilled sludge meets delisting requirements. Each unit shall at a minimum be divided into four quadrants and a boring drilled at the center or an identified area of concern within each quadrant. A composite sample comprising the vertical extent of the sludge at each individual boring location is to be collected within the sludge areas of the two drying beds and the two basins. Surface composite samples using the same number of quadrant above shall be collected for the sludge in the two basins and the contaminated soil in the vicinity of the basins. The 102,400 square foot grid surrounding the basins could stake on an 160-foot interval for a square grid area of approximately 25,600 square feet (a total of four square grid). A soil boring shall be installed at the center of each square grid for a total of 4 soil borings. Boring samples shall be collected at three depth levels (top, middle and bottom) for a total of three samples at each boring location. A total of 40 samples is expected from the drying beds, the basins and the area surrounding the basins. QA/QC protocols would remain as spelled out in the petition. The samples are to be analyzed for TCLP metals that includes arsenic, barium, cadmium, chromium and nickel.

If, anytime after disposal of the delisted waste, GE possesses or is otherwise made aware of any environmental or waste data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in section VI.A. is at a level higher than the delisting level established in section VI.A. or is at a level in groundwater that exceeds the point of exposure concentration established in section VI.A., then GE must report such data, in writing, to the Director of the Division of Environmental Planning and Protection within 10 days of first possessing or being made aware of that data.

Based on any information provided by GE and any other information received from any source, the Director of the Division of Environmental Planning and Protection will make a determination as to whether the reported information requires GE to take action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

C. What Happens if GE Fails To Meet the Conditions of the Exclusion?

If GE violates the terms and conditions established in the exclusion, the Agency may start procedures to withdraw the exclusion.

The EPA has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978) *et seq.* (APA), to reopen a delisting decision if we receive new information indicating that the conditions of this exclusion have been violated.

If the Director of the Division of Environmental Planning and Protection determines that information reported by GE as described in section VI.B., or information received from any other source, does require GE to take action the Director of the Division of Environmental Planning and Protection will notify GE in writing of the actions the Director of the Division of Environmental Planning and Protection believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing GE with an opportunity to present information as to why the proposed action is not necessary or to suggest an alternative action. GE shall have 10 days from the date of the Director's notice or such other time period as established by EPA to present the information.

If after 10 days, GE presents no further information, the Director of the Division of Environmental Planning and Protection will issue a final written determination describing the actions that are necessary to protect human health or the environment. Any required action described in the Director's determination shall become effective immediately, unless the Director of the Division of Environmental Planning and Protection provides otherwise.

VII. Regulatory Impact

Under Executive Order 12866, EPA must conduct an ''assessment of the potential costs and benefits'' for all ''significant'' regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from today's proposed rule, this

proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VIII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, the Agency certifies that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

IX. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by Office of Management of Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

X. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with federal mandates that may result in estimated costs to state, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, tribal governments or the private sector estimated to cost $100 million or more in any one year.

The EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty on any state, local, or tribal governments or the private sector estimated to cost $100 million or more in any one year. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

XI. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments; the nature of their concerns; copies of written communications from the governments; and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

XII. Executive Order 13045

Executive Order 13045 is entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XIII. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects that communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to meaningful and timely input'' in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XIV. Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State

and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implication and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

XV. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical.

Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where EPA does not use available and potentially applicable voluntary consensus standards, the Act requires that Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards, and thus the Agency has no need to consider the use of voluntary consensus standards in developing this proposed rule.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: December 15, 2003.

Walter Mugdan,

Director, Division of Environmental Planning and Protection.

Editorial Note: This document was received in the Office of the Federal Register on March 16, 2004.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX of part 261, add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* *	*	* * * *
GE's Former RCA del Caribe	Barceloneta Puerto Rico	Wastewater treatment plant (WWTP) sludges from chemical etching operation. (EPA Hazardous Waste No. F006) and contaminated soil mixed with sludge. This is a one-time exclusion for a range of 5,000 to15,000 cubic yards of WWTP sludge. This exclusion was published on [insert publication date of the final rule]. 1. Delisting Levels: (A) The constituent concentrations measured in the TCLP extract may not exceed the following levels (mg/L): arsenic—0.0604; barium—472; cadmium—3.63; chromium—1,400,000; lead—484; mercury—0.219; nickel—182; selenium—14; silver—24.8; and cyanide—87.1 (B) The total constituent concentrations in any sample may not exceed the following levels (mg/kg): arsenic—91,000; barium—20,600,000; cadmium—771,000; chromium—2,310,000,000; lead—541,000; mercury—80; nickel—30,800,000; selenium—771,000; silver—771,000; and cyanide—30,800,000.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		2. Verification Sampling—For the two drying beds and two basins, composite samples comprising the vertical extent at individual boring location; for the contaminated soil around the basins; boring samples at 3 different depth levels (top, middle and bottom) also at individual boring location, are to be collected from four different boring locations or quadrant within each of the units and four different square grid areas within the soil surrounding the basins. Surface composite samples within each quadrant and square grid shall also be collected for the sludge in the two basins and the contaminated soil in the vicinity of the basins. A total of forty samples must be collected as follows: Sixteen boring composite samples for the drying beds and basins, twelve surface composite samples for the basins and contaminated soil, and twelve boring samples for the soil around the basins. The samples are to be analyzed for TCLP metals that include arsenic, barium, cadmium, chromium and nickel. The results are to be compared to the delisting levels in Condition (1)(a). Sludge from which samples collected exceed delisting levels are not delisted. Additional sampling can be conducted with the approval of U.S. EPA Region 2 in order to isolate the sludge which exceeds the delisting levels from sludge that meets the delisting levels. 3. Reopener Language—(a) If, anytime after disposal of the delisted waste, GE possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in Condition (1) is at a level higher than the delisting level established in Condition (1), or is at a level in the groundwater at a level exceeding the point of exposure groundwater levels established in section VI.A. of the preamble, then GE must report such data, in writing, to the Director of the Division of Environmental Planning and Protection within 10 days of first possessing or being made aware of that data. (b) Based on the information described in paragraph (a) and any other information received from any source, the Director will make a preliminary determination as to whether the reported information requires GE to take action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (c) If the Director of the Division of Environmental Planning and Protection determines that the reported information does require action, the Director of the Division of Environmental Planning and Protection will notify GE in writing of the actions the Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing GE with an opportunity to present information as to why the proposed action is not necessary or to suggest an alternative action. GE shall have 10 days from the date of the Director's notice or such other time period as is established by EPA to present the information. (d) If after 10 days GE presents no further information, the Director of the Division of Environmental Planning and Protection will issue a final written determination describing the actions that are necessary to protect human health or the environment. Any required action described in the Director's determination shall become effective immediately, unless the Director of the Division of Environmental Planning and Protection provides otherwise. 4. Notifications—GE must provide a one-time written notification to any State Regulatory Agency to which or through which the waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the waste exclusion and a possible revocation of the decision.

* * * * *

[FR Doc. 04–6216 Filed 3–18–04; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2004–17243]

RIN 2127–AG86

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of withdrawal of proposed rulemaking.

SUMMARY: This document withdraws a 1998 notice of proposed rulemaking (NPRM) that would have amended the Federal motor vehicle safety standard on lighting to reduce glare from daytime running lamps (DRLs). In late 2001, General Motors (GM) submitted a petition for rulemaking that asked NHTSA to mandate DRLs on new vehicles. We have decided that the issue addressed in the 1998 NPRM, just one of a number of interrelated issues surrounding DRLs, would best be resolved in the context of responding to the GM petition.

FOR FURTHER INFORMATION CONTACT: The following persons at the NHTSA, 400 Seventh Street SW., Washington, DC 20590.

For non-legal issues, you may call Mr. Richard VanIderstine, Office of Crash Avoidance Standards (Telephone: 202–366–2720) (Fax: 202–366–7002).

For legal issues, you may call Mr. Eric Stas, Office of Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820).

SUPPLEMENTARY INFORMATION:

I. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment,* establishes lighting requirements for motor vehicles. Although the standard does not require DRLs, it does specify requirements that they must meet if a vehicle manufacturer voluntarily decides to provide them (*see* 49 CFR 571.108, S5.5.11).

In proposing to permit vehicles to be equipped with DRLs, we stated that limits on the intensity of DRLs were needed to prevent glare and to ensure that DRLs do not mask the vehicle's turn and hazard warning signals (56 FR 38100, August 12, 1991). In the final rule published on January 11, 1993, we adopted the following limitations on DRL intensity: (1) 3,000 cd for lamps other than headlamps, and (2) 7,000 cd for upper beam headlamps used as DRLs at test point H-V, if mounted not higher than 864 mm above the road surface (*see* 58 FR 3500). No limitation was provided for lower beam headlamps used as DRLs.

Since that time, the number of DRL-equipped vehicles has increased significantly, and NHTSA has received numerous complaints regarding DRL glare. Further, in 1997, the National Motorists Association (NMA) and JCW Consulting submitted petitions for rulemaking that, among other things, asked NHTSA to amend FMVSS No. 108 to reduce DRL intensity and resulting glare.[1]

NHTSA published a notice of proposed rulemaking in 1998 to amend FMVSS No. 108 to reduce glare from DRLs (63 FR 42348, August 7, 1998). Such reduction would have been accomplished in three stages. The NPRM proposed that one year after publication of the final rule, DRLs utilizing the upper headlight beam would not be permitted to exceed 3,000 cd at any point, thereby becoming subject to the maximum candela permitted for DRLs other than headlamps. Two years after publication of the final rule, that same limitation would have applied to the upper half of lower beam DRLs. Finally, four years after publication of the final rule, all DRLs, except lower beam DRLs, would have been subject to a flat 1,500 cd limit. (Lower beam DRLs would have been limited to 1,500 cd at horizontal or above.) NHTSA anticipated that its proposed approach would have provided the public with all of the conspicuity benefits of DRLs, while reducing the glare from these light sources.

Approximately 700 comments have been submitted since the NPRM was published in 1998. Many commenters did not want DRLs, regarding them to be of little value and requesting that they be prohibited. Other commenters represented the opposite opinion, stating that DRLs are effective and should be mandatory. Still other commenters supported the proposal to reduce glare from DRLs.

In the intervening period, NHTSA received a petition for rulemaking from General Motors (GM) asking the agency to mandate DRLs on new vehicles.[2] In support of its December 20, 2001 petition, GM submitted various studies designed to demonstrate the efficacy of DRLs in preventing deaths and injuries associated with daytime crashes. In addition, information was provided on the costs of DRLs. During this time, NHTSA also has studied the impact of DRLs in terms of crash avoidance on U.S. highways.

II. Reason for Withdrawal

After reviewing the comments submitted pursuant to the 1998 NPRM, NHTSA has concluded that there are a number of interrelated issues surrounding DRLs that may best be evaluated in a comprehensive fashion. These issues include: whether DRLs should be optional or mandatory, how to balance the competing goals of conspicuity and prevention of glare when setting intensity levels, what are the levels of cost and benefits associated with DRLs, whether DRLs may reduce the conspicuity of motorcycles or emergency vehicles, whether DRLs mask turn signals or other roadway users, and the extent to which they may distort distance perception or result in failure to use the vehicle's normal headlighting system at night.

Moreover, both the GM studies and NHTSA's own studies suggest that DRLs have the positive potential to reduce crashes. We believe that further research and analysis may provide a better understanding of potential safety benefits of DRLs and optimum performance requirements for those devices. As one example of our ongoing research, NHTSA currently has a study underway on the effect of DRLs on motorcycle conspicuity, that could assist in assessing the safety benefit of DRLs, once completed.

In seeking to address DRL issues on a more comprehensive basis, NHTSA also plans to conduct further deliberations with Transport Canada, particularly regarding its comments to the docket on DRL intensity reduction and on its follow-up comments regarding switching and other issues. Such consultations would promote harmonization of DRL regulation in the North American market.

Accordingly, for all of the reasons discussed above, NHTSA is withdrawing the 1998 NPRM for DRL

[1] The NMA petition (submitted in August 1997) and the JCW Consulting petition (submitted in September 1997) are discussed in detail in NHTSA's August 7, 1998 **Federal Register** notice (*see* 63 FR 42348, 42351). The NMA petition is available under Docket No. NHTSA–1998–3319–21, and the JCW Consulting petition is available under Docket No. NHTSA–1998–3319–22. Both were originally incorporated in Docket submissions No. NHTSA–1998–3319–1 and –2.

[2] Docket No. NHTSA–2001–8876–11.

intensity reduction. We believe that the issue raised in the NPRM would best be resolved in a future comprehensive evaluation of DRL issues that we plan to undertake in response to the petition from GM.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued: March 16, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–6208 Filed 3–18–04; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 69, No. 54
Friday, March 19, 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

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today denied a petition for trade adjustment assistance (TAA) that was filed on February 13, 2004, by the Michigan Fish Producers' Association, representing channel catfish fishermen in Michigan.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that landed prices for channel catfish did not decline by more than 20 percent during the January–December 2003 marketing year, a condition required for certifying a petition for TAA.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.assistance@fas.usda.gov.*

Dated: March 8, 2004.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 04–6191 Filed 3–18–04; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Payette National Forest, Idaho; Meadows Slope Wildland Fire Protection Project

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service published a Notice of Intent to prepare an environmental impact statement (EIS) for the Meadows Slope Wildland Fire Protection Project in the **Federal Register** on December 2, 2002 (Volume 67, Number 231, pages 71531–71532). A revised Notice of Intent is being issued for several reasons (Forest Service Handbook 1909.15, part 21.2):

1. It has been more than six months since filing the original Notice of Intent;
2. Specifics of the proposed action have been refined and better described due to more site-specific information;
3. The Payette National Forest's revised Land and Resource Management Plan was approved in July 2003; and
4. The project falls under the Healthy Forest Restoration Act of 2003, Pub. L. 108–148.

The USDA Forest Service will prepare the Meadows Slope Wildland Fire Protection Project EIS. The proposed action is to create a half-mile wide fuelbreak on National Forest System lands to reduce the risk of damage to rural homes, private property, and National Forest resources from wildland fires. The agency gives notice of the full National Environmental Policy Act (NEPA) analysis and decision-making process so that interested and affected people know how they may participate and contribute to the final decision.

DATES: Comments need to be received by April 19, 2004.

ADDRESSES: Send written comments to Kimberly A. Brandel, District Ranger, New Meadows Ranger District, Payette National Forest, P.O. Box J, New Meadows, Idaho, 83654.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to Sylvia Clark, Interdisciplinary Team Leader, at the above address, phone (208) 347–0300.

SUPPLEMENTARY INFORMATION: The Meadows Slope project area is about four miles east of New Meadows and three miles northwest of McCall, and approximately 6,450 acres in size. It is located in Sixmile-Threemile, Lower Goose, Little Creek, Little Goose Creek, Middle North Fork Payette River, and Payette Lake sub-watersheds on the New Meadows and McCall Ranger Districts. The purpose and need for this action is to (1) reduce crown fire risk, (2) reduce forest fuel loading, and (3) reduce risk to life, property, natural resources, and suppression resources on National Forest System lands surrounding the Timber Ridge, Rock Flat, King's Pine, and Crescent Rim Subdivisions, and additional private developments adjacent to the project area.

The proposed action includes a variety of activities to meet the purpose and need. (1) Harvest timber on approximately 3,292 acres, producing approximately 12.7 million board feet (MMBF), using tractor and skyline logging systems. The silvicultural method used would be free thinning with reserve shelterwood/seed tree. (2) Hand pile and burn approximately 939 acres within Riparian Habitat Conservation Areas. (3) Non-commercial thin approximately 1481 acres. (4) Salvage dead and dying timber killed by fir engraver beetle and other pests or weakened due to light, water, or nutrient competition which may increase the fire potential within the project area. (5) Restore 74 acres of unproductive soil by obliterating roads, skid trails and/or landings in order to meet the Forest Plan Standard for total soil resource commitment (TSRC). (6) Road management would include 43 miles of maintenance, 20 miles of reconstruction, and 1.25 miles of new construction. (7) Ensure desired species composition by planting and/or natural regeneration of fire-tolerant Douglas-fir, ponderosa pine, and western larch seedlings on 804 acres following fuelbreak activities. (8) Treat harvest-generated fuels on approximately 4,773 acres (both commercial and non-commercial harvest acres). Treatments would include machine piling and burning (excavator piling would be used where slopes exceed 35 percent); broadcast burning; and/or yarding tops. (9) Monitor and treat noxious weeds, if created, within the fuelbreak area. A total of 5,712 acres would be treated with this proposed action.

Preliminary issues for this project include effects on water quality, soil productivity, wildlife, habitat, recreation, access management, visual quality, forest vegetation, and fish habitat.

The Healthy Forest Restoration Act, Title I, Section 104(c), sets forth requirements on alternatives to be analyzed. This document will analyze a no-action alternative, the proposed action, and an additional alternative

proposed by the local community. The no-action alternative will serve as a baseline for comparison of alternatives.

Comments received in response to this notice, including names and addresses of those who comment, will be part of the project record and available for public review.

The Forest Service is seeking information and comments from other Federal, State, and local agencies; Tribal governments; organizations; and individuals who may be interested in or affected by the proposed action. This input will be used in preparation of the EIS.

Comments will be appreciated throughout the analysis process. The draft EIS will be filed with the Environmental Protection Agency (EPA) and is anticipated to be available for public review by autumn 2004. The comment period on the draft EIS will be 45 days. It is important that those interested in the management of the Payette National Forest participate at that time.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1002 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E. D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues raised by the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the 45-day comment period ends on the draft EIS, the Forest Service will analyze comments received and address them in the final EIS. The final EIS is scheduled to be completed in spring 2005. The Responsible Official is the Payette National Forest Supervisor. The decision will be documented, including the rationale for the decision, in a Record of Decision (ROD). The final environmental impact statement will be subject to review under the Forest Service Predecisional Review for Proposed Hazardous Fuel Reduction Projects at 36 CFR 218, Subpart A.

Dated: March 12, 2004.

Robert S. Giles,

Acting Forest Supervisor.

[FR Doc. 04–6197 Filed 3–18–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: North Central Idaho Resource Advisory Committee, Kamiah, Idaho, USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Nez Perce and Clearwater National Forests' North Central Idaho Resource Advisory Committee will meet Tuesday, April 13, 2004 in Lewiston, Idaho for a business meeting. The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Ihor Mereszczak, Staff Officer and Designated Federal Officer, at (208) 935–2513.

SUPPLEMENTARY INFORMATION: The business meeting on April 13, at the Sacajawea Center, 1824 Main Street, Lewiston, ID, begins at 10 a.m. (P.S.T.). Agenda topics will include discussion of potential projects. A public forum will begin at 2:30 p.m. (P.S.T.).

Dated: March 8, 2004.

Ihor Mereszczak,

Acting Forest Supervisor.

[FR Doc. 04–6164 Filed 3–18–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Washington Provincial Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on Wednesday, March 31, 2004, at the Gifford Pinchot National Forest Headquarters, located in Vancouver, Washington, at 10600 NE. 51st Circle, Vancouver, WA 98682. The meeting will begin at 9 a.m., and continue until 4 p.m.

The purpose of the meeting is to: Receive advice on the Forest's unmanaged recreation program; to receive advice on the Forest's Memorandum of Agreement with the Washington State Department of Ecology; to discuss a proposed expansion of the White Pass Ski Area, and to share information among members.

All Southwest Washington Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The ''open forum'' provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The ''open forum'' is scheduled to occur at 1 p.m. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Tom Knappenbeger, Public Affairs Officer, at (360) 891–5005, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Dated: March 15, 2004.

Claire Lavendel,

Forest Supervisor.

[FR Doc. 04–6173 Filed 3–18–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Environmental Impact Statement on Watershed Planning and Implementation of Resource Protection Measures for the Rockhouse Creek Watershed, Leslie County, KY

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of intent (NOI).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the U.S. Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), Kentucky State Office, announces its intention to prepare an environmental impact statement (EIS) to evaluate the impacts of resource protection measures that would be employed under a watershed plan to reduce risks to life and property caused by frequent flooding of the community located in the Rockhouse Creek Watershed, Leslie County, Kentucky. Under the agency's proposal, NRCS would provide financial and technical assistance to sponsoring local organizations, including the Leslie County Fiscal Court, the Leslie County Conservation District, and the City of Hyden, for construction of two flood-retarding structures (earthen dams) in the upper reaches of the watershed. Such measures are authorized under the Watershed Protection and Flood Prevention Act of 1954, Public Law 83–566 (Pub. L. 566). The Draft EIS will assess the potential environmental and socio-economic impacts of the NRCS proposed action, as well as a range of alternatives to dam construction as identified in the watershed planning/NEPA process, including other structural and non-structural measures that would address recurrent Rockhouse Creek flooding. The EIS analysis will incorporate mitigation measures NRCS would use to minimize to the greatest extent practicable any potential adverse environmental or socio-economic impacts. Because the proposed flood retarding structures would be located on Federal lands on the Daniel Boone National Forest, the Forest Service has agreed to be a cooperating agency for preparation of the EIS.

Public Participation: The NRCS invites full public participation to promote open communication and better decisionmaking. All persons and organizations that have an interest in the Rockhouse Creek flooding problems as they affect Leslie County and the environment are urged to participate in the NEPA environmental analysis process. Assistance will be provided as necessary to anyone having difficulty in determining how to participate.

Public comments are welcomed throughout the NEPA process. Opportunities for public participation include: (1) During the EIS scoping period when comments on the NRCS proposal will be solicited through various media and at a public meeting to be held in Hyden, KY; (2) during the 45-day review and comment period for the published Draft EIS; and (3) for 30 days after publication of the Final EIS.

Scoping Process: NRCS is soliciting comments from the public indicating what issues and impacts the public believes should be encompassed within the scope of the EIS analysis, voicing any concerns they might have about the NRCS proposal and alternatives, and submitting any ideas they might have for addressing risks to life and property in the Rockhouse Creek Watershed.

Date Scoping Comments are Due: Comments may be submitted by regular mail, toll-free telephone line, facsimile, or e-mail until 6 p.m. e.s.t. on May 21, 2004. Written comments submitted by regular mail should be postmarked by May 21, 2004, to ensure full consideration. Comments submitted after this date will be considered to the extent practicable.

ADDRESSES: Comments on what the public wishes to be analyzed or addressed within the Draft EIS should be mailed to: Rockhouse Creek EIS, c/o Leslie County Conservation District, P.O. Box 932, Hyden, KY 41749.

Comments also may be submitted by calling the toll free telephone number 1–866–760–1421, by sending a facsimile to 1–703–760–4899, or e-mail to *rockhouse@mangi.com.* Respondents should provide mailing address information and indicate if you wish to be included on the EIS mailing list. All individuals on the mailing list will receive a copy of the Draft EIS.

Scoping Meeting: A public scoping meeting will be held April 20, 2004 to provide information and the opportunity to discuss the issues and alternatives that should be covered in the Draft EIS and to receive oral and written comments. The meeting will be held from 6 p.m. to 8:30 p.m. in the Tim Lee Carter Senior Center, Hyden, KY.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Kuhn, Assistant State Conservationist—Natural Resources Planning, 771 Corporate Drive, Suite 210, Lexington, KY 40503–5479, (859) 224–7371.

An information package providing additional details about the watershed and proposed project is available upon request. Requests should be directed to the same mailing address, telephone number, facsimile number, or e-mail address noted above under **ADDRESSES.** NRCS also plans to publish a newsletter to keep interested parties up to date on the project. Requests to be included on the newsletter mailing list should be made to the same addresses noted above.

Responsible Officials: The State Conservationist, NRCS, Lexington, Kentucky is the responsible official for this proposed action. The Forest Supervisor for the Daniel Boone National Forest, located at 1700 Bypass Road, Winchester, KY 40391, is the responsible official for the decision concerning issuance of a special use permit that would allow construction of the flood retarding structures on National Forest lands under the proposed action.

Decisions to be Made: The responsible NRCS official will decide whether to approve the proposal, an alternative to the proposal, or no action. Contingent on the NRCS decision, the FS responsible official will make a decision as to whether to issue a Special Use Permit and will also determine whether the Daniel Boone National Forest Land and Resource Management Plan will need to be amended.

SUPPLEMENTARY INFORMATION:

Background: Rockhouse Creek is a tributary of the Kentucky River that flows approximately seven miles from its origins through the community of Hyden to its confluence with the Middle Fork of the Kentucky River. The Rockhouse Creek Watershed encompasses 9,450 acres of primarily steep, mountainous terrain with ''V'' shaped valleys and narrow ridge tops ranging from 856′ above mean sea level at Hyden to 1,772′ at its headwaters.

The major water resource problems in the Rockhouse Creek watershed are serious flooding and deposition of sediment. Moderate floodwater damage occurs every year in the watershed with more severe damage occurring every 5 to 10 years. A longtime resident has stated that there were major flood events on Rockhouse Creek in 1927, 1937, 1947, 1957, 1963, 1977, 1984, and 1989. The most recent major flood events in June and October of 1989 each caused damages in excess of $450,000. Other concerns identified in planning were inadequate and vulnerable public water supply and lack of public water-based recreation.

In 1993, sponsoring local organizations (SLO) that include the Leslie County Fiscal Court, Leslie

County Conservation District, and the City of Hyden requested assistance from NRCS and the USDA Forest Service (FS) in development of a Resource Protection Plan for the Rockhouse Creek Watershed, with major emphasis on providing flood protection for businesses, homes, and roads located along the floodplain. A preliminary ecosystem-based resource plan (preliminary watershed plan), developed in 1994, described existing floodwater damages, some additional water resource concerns, and alternatives for addressing these concerns. Among the options evaluated at the time were channel enlargement of Rockhouse Creek, flood proofing of affected structures, replacement of certain culverts, and removal of obstructions. The preliminary evaluation led to the conclusion that these measures were not fully adequate to address Rockhouse Creek flooding because the large volume of run-off generated from storm events would quickly overwhelm even the expanded channel capacity. Possible relocation of affected households was also considered but the preliminary evaluation found it not to be a viable option because of the resulting community disruption and expected high cost, and the difficulty involved in identifying suitable relocation sites.

In 2000, NRCS representatives met with local sponsors and public officials to discuss conducting a more detailed flood protection analysis by evaluating the upper reaches of the watershed for the placement of floodwater retarding structures. A report was issued in 2002 that evaluated six different locations for floodwater retarding structures (FRS) and one location for a multi-purpose structure (MPS) that would also meet the area's water supply and water-based recreation needs as well as floodwater control. The NRCS proposal in the EIS includes the two structures evaluated in the 2002 report that provided substantial flood protection and that also met applicable cost-benefit criteria.

The Watershed Protection and Flood Prevention Act of 1954, Public Law 83–566, authorizes NRCS to provide financial and technical assistance to local sponsors to address local flooding problems and implement watershed protection measures. Under the agency proposal for Rockhouse Creek, NRCS would provide financial and technical assistance to the sponsors for the construction of two dams and the sponsors would be responsible for operation and maintenance. In the case of the MPS, the sponsors must pay fifty percent of the water supply costs under Public Law 83–566 authority (*e.g.* cost of a pipeline to connect the impoundment to existing Rockhouse community water supply lines) unless otherwise authorized by Congress.

Need for the Proposal: The proposal is needed to address the problems associated with recurrent flooding due to periodic intense rainstorm events in the Rockhouse Creek Watershed, which continue to pose a hazard to human safety and to cause extensive flood damage to properties along the Creek.

Purpose of the Proposal: The purpose of the proposal is to assist the local community in taking appropriate measures to assure public safety and protect property in the face of the recurrent flooding problems on Rockhouse Creek. Constructing the flood-retarding structures would impound and reduce peak floodwater flows associated with intense rainstorm events on Rockhouse Creek, thereby reducing flood levels and potential risk to life and property downstream. Secondarily, the impoundments could provide an opportunity for water-based recreation, including fishing and swimming. The largest of the dams might also serve as a multi-purpose structure providing drinking water and water for fire protection, for the city of Hyden and the greater Rockhouse Creek community, although the SLO have indicated they have an alternative water source that is currently considered preferable to meet those purposes.

Preliminary Issues: Among the issues that NRCS plans to consider in the scope of the EIS analysis are the:

- Impacts to the environmental resources of the public lands that would be flooded by the proposed dam impoundments, particularly impacts to any protected plant or animal species;
- Economic and social impacts of the proposed action and alternatives;
- Availability of borrow sites of suitable material large enough for constructing the dams and within close proximity to the dam sites;
- Environmental impacts of realigning roads, pipelines, or other infrastructure that would be required to allow for dam construction and floodwater impoundment;
- Geologic integrity of the proposed dam sites;
- Natural gas wells, coal mines, or other mineral resources that might be affected; and
- Costs and benefits of the proposed action and alternatives.

Preliminary Alternatives: The Draft EIS will assess the potential environmental and socio-economic impacts of a range of alternatives, including structural and non-structural measures, for reducing risks to life and property presented by Rockhouse Creek flooding. The preliminary list of alternatives for the Draft EIS includes: (1) The Proposed Action—constructing two flood retarding structures—one a flood retarding dam, the other a multipurpose dam in the watershed; (2) building two flood retarding dams and one multipurpose dam in the watershed; (3) using other structural measures to deal with flooding and reduce damages; (4) using non-structural flood protection measures to reduce the potential for damage, including relocating households to remove them from flood-prone locations in the watershed; (5) employing a combination of structural and non-structural measures, and (6) taking No Action—making no improvements for flood protection. The alternatives will be refined and supplemented, as appropriate, based on input by the public and agencies during the public scoping process.

Alternative 1—the Proposed Action: Construct Two Flood Retarding Structures. Under the Proposed Action, NRCS would provide financial and technical assistance to the SLO for construction of two earthen dams in the headwaters of Rockhouse Creek. One would be a flood retarding structure on the mainstem of the creek (FRS #3 from the 2002 Study), the other a multipurpose structure on the Laurel Creek tributary (MPS #2 from the 2002 Study). The FRS would be located on the upper reach of the Rockhouse Creek main tributary approximately 7,000′ upstream of its confluence with Puncheon Camp Branch. It would be 85′ high, have a pool surface area of 6.4 acres, and store 291 acre-feet of water and 100 acre-feet of sediment from a drainage area of 1,200 acres. The MPS would be located on Laurel Creek approximately 5,000′ upstream of its confluence with the left fork of Rockhouse Creek. It would be 98′ high, have a pool surface area of 14.9 acres, and store 350 acre-feet of water and 156 acre-feet of sediment from a drainage area of 1,880 acres. Both dams would be located on Forest Service lands. Installation of this alternative would provide a 5-year level of flood protection to 43 percent of the properties subject to first floor flooding at that frequency and protect 23 percent of the properties subject to flooding by a 100-year storm.

Alternative 2—Construct Three Flood Retarding Structures. Under this alternative, NRCS would construct three dams, including the two dams identified under the proposed action and a third structure located on the Left Fork of Rockhouse Creek, approximately 1,000′ upstream of its confluence with Laurel

Creek and listed as FRS #1 in the 2002 Report. It would be 78′ high, have a pool surface of 2.4 acres, and store 95 acre-feet of water and 46 acre-feet of sediment from a drainage area of 550 acres. The third dam would be located on private lands, the rights to which the SLO would need to secure.

Alternative 3—Employ Other Structural Measures. Under this alternative, NRCS would provide financial and technical assistance to the SLO for implementation of structural measures other than dams to address flooding problems. Such measures would include channel widening of Rockhouse Creek, replacement of certain culverts and bridges, and removal of obstructions to flow.

Alternative 4—Employ Non-Structural Flood Protection Measures. Under Alternative 3, NRCS would provide financial and technical assistance to the SLO for implementation of non-structural measures only. Flood proofing would be implemented to protect structures in the floodplain, including installation of floodwalls, raising structures on pilings, or moving structures out of the highest risk locations. Households at high flood risk would be relocated out of the Rockhouse Creek watershed to another suitable location. Under this alternative NRCS would consider moving households to existing dwellings outside the watershed and demolishing the remaining structure after payment of fair market value or would consider relocation of the home structure itself to a new location.

Alternative 5—Employ a Combination of Structural and Non-Structural Flood Protection Measures. Under this alternative, NRCS would provide financial and technical assistance to the SLO for implementation of a combination of flood protection measures that would include the structural and non-structural measures determined to be most appropriate and cost-effective to protect property and reduce flood damages. Dams and other structural measures and the use of flood proofing measures and household relocation would be considered.

Alternative 6—No Action Alternative. Under this alternative, NRCS would provide no financial or technical assistance to sponsoring local organizations for flood protection measures in the Rockhouse Creek watershed. Federal agencies are required to evaluate the impacts of a No Action alternative in preparing an Environmental Impact Statement, even though the alternative would not meet the agency's purpose and need.

Permits or Licenses Required: Construction of flood retarding structures is authorized under the Watershed Protection and Flood Prevention Act of 1954, (Pub. L. 83–566) administered by NRCS. A special use permit would have to be issued by the Forest Service for construction of such structures and impoundment of water on National Forest lands. A permit would be required from the State of Kentucky, Division of Water for any dam structures.

A permit would be required from the U.S. Army Corps of Engineers under Clean Water Act (CWA), Section 404 for any project that would impede the flow of waters of the U.S. or that would affect any wetlands. The project would also require a water quality certification by the State under CWA, Section 401, which could be issued in conjunction with the CWA 404 permit. Approval from the State Historic Preservation Office would be required if any National Register-eligible historic properties would be affected. Consultation with the U.S. Fish and Wildlife Service would be required if the proposal may affect any species listed as threatened or endangered under the Endangered Species Act.

Estimated Dates for Draft EIS and Final EIS: NRCS expects to file the Draft EIS with the Environmental Protection Agency (EPA) and to have it available for public review and comment during the summer or fall of 2004. At that time, EPA will publish a Notice of Availability (NOA) of the Draft EIS in the **Federal Register**. The public comment period on the Draft EIS will be a minimum of 45-days from the date EPA publishes the NOA.

NRCS and the Forest Service believe, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the Draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and concerns (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the Draft EIS stage, but are not raised until after completion of the Final EIS, may be waived or dismissed by the courts (*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this project participate by the close of the Draft EIS review period, so that substantive comments are made available to the NRCS and Forest Service at a time when the comments can be meaningfully considered in the Final EIS.

To assist NRCS and the Forest Service in identifying and considering issues and concerns on the proposed action and alternatives, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft EIS. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the Draft EIS. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 153.3 in addressing these points.

After the comment period on the Draft EIS ends, the comments will be analyzed, considered, and responded to by NRCS and the Forest Service in preparing the Final EIS. The Final EIS is scheduled for completion by the end of 2004. The responsible officials will consider the comments, responses, environmental consequences discussed in the Final EIS, and applicable laws, regulations, and policies in making a decision regarding this proposed action. The responsible officials will document the decisions and reasons for the decisions in a Record of Decision. That decision will be subject to appeal in accordance with 36 CFR Part 215.

Dated: March 12, 2004.

David G. Sawyer,

State Conservationist, Natural Resources Conservation Service, USDA.

[FR Doc. 04–6200 Filed 3–18–04; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Thirtymile Creek Watershed, MT

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of intent to deauthorize federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and the Natural Resources Conservation Service Guidelines (7 CFR Part 622), The Natural Resources Conservation Service gives notice of the intent to deauthorize Federal funding for the Thirtymile Creek Watershed Project, Blaine County, Montana.

FOR FURTHER INFORMATION CONTACT: Dave White, State Conservationist, Natural Resources Conservation Service, 10 East Babcock, Room 443, Bozeman, Montana, 59715, Telephone: 406–587–6811.

Thirtymile Creek Watershed, Montana

Notice of Intent To Deauthorize Federal Funding

SUPPLEMENTARY INFORMATION: A determination has been made by Dave White, State Conservationist that the proposed works of improvement for the Thirtymile Creek project will not be installed. One of the two sponsoring local organizations has concurred in this determination and agrees that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Dave White, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding State and Local clearinghouse review of Federal and federally assisted programs and projects is Applicable.)

Dated: February 19, 2004.

Dave White,

State Conservationist.

[FR Doc. 04–6201 Filed 3–18–04; 8:45 am]

BILLING CODE 3410–16–P

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 the program for Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients.

DATES: Comments on this notice must be received by May 18, 2004, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Janet Stouder, Multi-Family Housing Portfolio Management Division, Rural Housing Service, Room 1245, Stop 0782, 1400 Independence Avenue, SW., Washington, DC 20250, Telephone: (202) 720–9728.

SUPPLEMENTARY INFORMATION:

Title: Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients.

OMB Number: 0575–0033.

Expiration Date of Approval: October 31, 2004.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Housing Service (RHS) is authorized under sections 514, 515, 516, and 521 of title V of the Housing Act of 1949, as amended, to provide loans and grants to eligible recipients for the development of rental housing in rural areas. Such multi-family housing (MFH) projects are intended to meet the housing needs of persons or families having very low to moderate incomes, senior citizens, the disabled, and domestic farm laborers.

RHS has the responsibility of assuring the public that MFH projects financed are managed and operated as mandated by Congress. This regulation (7 CFR part 1930, subpart C) was issued to insure consistent and proper management and operation of projects financed with MFH loan and grant funds. Minimal requirements have been established as deemed necessary to assure that applicable laws and authorities are carried out as intended.

With the provisions of this regulation, RHS will be able to provide the necessary guidance and supervision to new and existing borrowers to assist in the economical operation of their projects. RHS must be able to assure Congress and the general public that all MFH projects will be operated as economically as possible, for the purposes for which they are intended, and for the benefit of those they are mandated to serve.

The required information is collected on a project-by-project basis and is done so in accordance with the amended Housing Act of 1949, so that RHS can provide guidance and be assured of compliance with the terms and conditions of loan, grant, and/or subsidy agreements.

RHS will use the information collected to identify financially detrimental trends, poor management practices, and potential problems before they manifest themselves in the form of loan delinquencies, unpaid operation expenses, improper discriminatory practices, or high vacancy rates. With this information, RHS can assist the borrower through consultation (supervision) to improve the efficiency of the project and its operation. RHS supervision is especially critical during the first year of operation. In addition, the information provided is intended to verify whether or not the borrower is complying with the terms and conditions of loan, grant, or subsidy agreements. After the first year of operation, the information is requested of the borrower to assure continued compliance with the loan and grant agreements.

Failure by RHS to monitor progress of borrower operation through review of collected information and consultation would reasonably lead to noncompliance with statutory intent in some instances and financial default in others. Corrective action to remove such noncompliance or default would be costly to RHS and the public in terms of program integrity, public confidence, dollars, and staff time.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .90 hours per response.

Respondents: Individuals or households.

Estimated Number of Respondents: 18,200 borrowers, 420,000 tenants and 100,000 tenant applicant respondents.

Estimated Number of Responses Per Respondent: 4.43.

Estimated Total Annual Burden on Respondents: 2,143,740 hours.

Copies of this information collection can be obtained from Tracy Givelekian, RPMB Analyst, 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, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. 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. 04–6171 Filed 3–18–04; 8:45 am]

BILLING CODE 3410–XV–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a product and service previously furnished by such agencies.

DATES: Comments must be received on or before: April 18, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal government identified in this notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Blue Nitrile Examination Gloves,
6515–00–NIB–0236,
6515–00–NIB–0237,
6515–00–NIB–0238,
6515–00–NIB–0239,
6530–00–NIB–0104,
6530–00–NIB–0105,
6530–00–NIB–0106,
6530–00–NIB–0107.
NPA: Central Association for the Blind & Visually Impaired, Utica, New York.
Contract Activity: Transportation Security Administration, Arlington, Virginia.

Services

Service Type/Location: Furniture Rehabilitation, Building 2, 250 Vandenberg Street, Peterson AFB, Colorado.
NPA: Aspen Diversified Industries, Inc., Colorado Springs, Colorado.
Contract Activity: Headquarters, Air Force Space Command, Peterson AFB, Colorado.

Service Type/Location: Janitorial/Custodial, Thomas D. Lambros Federal Building & U.S. Courthouse, 125 Market Street, Youngstown, Ohio.
NPA: Youngstown Area Goodwill Industries, Youngstown, Ohio.
Contract Activity: GSA, Public Buildings Service (5P), Chicago, Illinois.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the product and service to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and service proposed for deletion from the Procurement List.

End of Certification

The following product and service are proposed for deletion from the Procurement List:

Product

Product/NSN: Soap Holder, 4510–00–965–1259.
NPA: Watauga Opportunities, Inc., Boone, North Carolina.
Contracting Activity: GSA, Southwest Supply Center, Fort Worth, Texas.

Service

Service Type/Location: Janitorial/Custodial, Social Security Administration Building, 525 18th Street, Rock Island, Illinois.
NPA: Alliance for the Mentally Ill of Rock Island and Mercer Counties, Rock Island, Illinois.
Contract Activity: GSA, Public Buildings Service (5P), Chicago, Illinois.

G. John Heyer,

General Counsel.

[FR Doc. 04–6230 Filed 3–18–04; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletion

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletion from Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List services previously furnished by such agencies.

EFFECTIVE DATE: April 18, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On October 10, 2003, January 9, and January 23, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 58651, 69 FR 1568, and 3329) of proposed additions to the Procurement List.

The following comments pertain to Grounds Maintenance, Naval & Marine Corps Reserve Center, 995 E. Mission Street, San Jose, California.

Comments were received from the current contractor in response to a request for impact information. While conceding that the financial impact on the company of losing this contract will be negligible, the contractor did not believe it fair for its entry-level employees to be losing their jobs. The contractor did not provide any indication of how many jobs would actually be lost as a result of the Committee's action.

The Committee is sympathetic to the plight of the contractor's workers, many of whom are from immigrant backgrounds and have limited job and communication skills. However, due to the extremely high unemployment rate of the people with severe disabilities whom the Committee's program serves, the Committee believes that the creation of jobs for these people outweighs the possible loss of jobs for people whose unemployment rate is normally lower, and who could thus more easily replace any jobs lost.

The following material pertains to all of the items being added to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the government.

2. The action will result in authorizing small entities to furnish the products and services to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Tree Marking Paint, Water Resistant,
8010–01–511–5057—2400–401 Type D Orange (16 oz. Aerosol),
8010–01–511–5059—2400–401 Type D Yellow (16 oz. Aerosol),
8010–01–511–5061—2400–401 Type D Green (16 oz. Aerosol),
8010–01–511–5063—2400–401 Type D Black (16 oz. Aerosol),
8010–01–511–5066—2400–401 Type D White (16 oz. Aerosol),
8010–01–511–5067—2400–401 Type D Blue (16 oz. Aerosol),
8010–01–511–5095—2400–401 Type C Orange (Quart),
8010–01–511–5097—2400–401 Type C Orange (Gallon),
8010–01–511–5098—2400–401 Type C Yellow (Quart),
8010–01–511–5100—2400–401 Type C Yellow (Gallon),
8010–01–511–5101—2400–401 Type C Green (Gallon),
8010–01–511–5102—2400–401 Type C Green (Quart),
8010–01–511–5103—2400–401 Type C Blue (Quart),
8010–01–511–5104—2400–401 Type C Blue (Gallon),
8010–01–511–5105—2400–401 Type C White (Quart),
8010–01–511–5107—2400–401 Type C White (Gallon),
8010–01–511–5108—2400–401 Type C Black (Quart),
8010–01–511–5109—2400–401 Type C Black (Gallon).
NPA: Lighthouse for the Blind, St. Louis, Missouri.
Contract Activity: GSA, Hardware & Appliances Center, Kansas City, Missouri.

Services

Service Type/Location: Custodial Services, Harley O. Staggers Federal Building, 75 High Street, Morgantown, West Virginia.
NPA: PACE Training and Evaluation Center, Inc., Star City, West Virginia.
Contract Activity: GSA, Public Buildings Service, Region 3 (3PMT), Philadelphia, Pennsylvania.

Service Type/Location: Grounds Maintenance, Naval & Marine Corps Reserve Center, 995 E. Mission Street, San Jose, California.
NPA: Social Vocational Services, Inc., Torrance, California.
Contract Activity: Naval Facilities Engineering Command, Alameda, California.

Service Type/Location: Janitorial/Custodial, Naval & Marine Corps Reserve Center, 995 E. Mission Street, San Jose, California.
NPA: Social Vocational Services, Inc., Torrance, California.
Contract Activity: Naval Facilities Engineering Command, Alameda, California.

Deletion

On January 9, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 1568) of proposed deletion to the Procurement List. After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the service to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service deleted from the Procurement List.

End of Certification

Accordingly, the following service is deleted from the Procurement List:

Service

Service Type/Location: Microfilming of EEG Records, Department of Veterans Affairs, William S. Middleton Memorial Veterans Hospital, Madison, Wisconsin.
NPA: Lester and Rosalie Anixter Center, Chicago, Illinois.
Contract Activity: Department of Veterans Affairs, Madison, Wisconsin.

G. John Heyer,

General Counsel.

[FR Doc. 04–6231 Filed 3–18–04; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 960223046–4076–09; I.D. 020404D]

RIN 0648–ZA09

Financial Assistance for Research and Development Projects to Strengthen and Develop the U.S. Fishing Industry (Saltonstall-Kennedy Program)

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

ACTION: Notice.

SUMMARY: NMFS cancels the competitive Saltonstall-Kennedy (S-K) Grant Program for fiscal year 2004 due to insufficient funding.

FOR FURTHER INFORMATION CONTACT: Alicia Jarboe, 301–713–2358.

SUPPLEMENTARY INFORMATION: The S-K Grant Program solicitation was originally included in the NOAA Omnibus Notice, Availability of Grant Funds for Fiscal Year 2004, published in the **Federal Register** on June 30, 2003 (68 FR 38678). Due to insufficient funding, NMFS cancels the competitive grant program announced in that solicitation.

NMFS will return to the applicants all applications NMFS received in response to the solicitation.

The S-K Grant Program is listed in the Catalog of Federal Domestic Assistance (CFDA) under Grant Program 11.427, Fisheries Development and Utilization Research and Development Grants and Cooperative Agreements Program.

Dated: March 15, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 04–6228 Filed 3–18–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031604D]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet April 4–9, 2004. The Council meeting will begin on Monday, April 5, at 11 a.m., reconvening each day through Friday. All meetings are open to the public, except a closed session will be held from 11 a.m. until 1 p.m. on Monday, April 5 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings will be held at the Red Lion Hotel Sacramento, 1401 Arden Way, Sacramento, CA 95815; telephone: 916–922–8041.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: 503–820–2280.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order:

A. Call to Order
1. Opening Remarks and Introductions
2. Roll Call
3. Executive Director's Report
4. Approve Agenda
B. Administrative Matters
1. Approval of Council Meeting Minutes
2. Regulatory Streamlining Process
3. Fiscal Matters
4. Appointments to Advisory Bodies, Standing Committees, and Other Forums
5. Staff Workload Priorities and Draft June 2004 Council Meeting Agenda
C. Groundfish Management
1. NMFS Report
2. Groundfish Allocation Recommendations
3. Groundfish Management Team Check-in on Inseason Management Issues (If Necessary)
4. Observer Data and Model Implementation
5. Policy on Groundfish Management Information Usage
6. Essential Fish Habitat (EFH) Environmental Impact Statement (EIS)
7. Status of 2004 Groundfish Fisheries and Inseason Adjustments
8. Final Harvest Levels for 2005–06 Fisheries
9. Review of Experimental Fishery Permit (EFP) Activities for 2003 and Initial Concepts for 2005–06
10. Stock Assessment Planning for 2007–08 Fisheries Management
11. Fishery Management Plan (FMP) Amendment 16–3: Rebuilding Plans for Cowcod, and Widow and Yelloweye Rockfish
12. Bycatch Programmatic EIS
13. Adoption of 2005–06 Proposed Management Alternatives for Public Review
14. Latent Limited Entry Trawl Permits
15. Inseason
D. Salmon Management
1. Identification of Stocks Not Meeting Conservation Objectives for Three Consecutive Years
2. Methodology Review Process for 2004
3. Final Action on 2004 Salmon Management Measures
E. Habitat
Current Habitat Issues
F. Pacific Halibut Management
Adopt Final 2004 Incidental Catch Regulations for Salmon Troll and Fished Gear Sablefish Fisheries
G. Highly Migratory Species Management
1. NMFS Report
2. Endangered Species Act Considerations Related to Sea Turtle/Longline Fishery Interactions
3. FMP Amendment for Limited Entry in the High Seas Pelagic Longline Fishery

SCHEDULE OF ANCILLARY MEETINGS

SUNDAY, April 4, 2004

Groundfish Management Team 9 a.m.
Klamath Fishery Management Council 3 p.m.

MONDAY, April 5, 2004

Council Secretariat 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Scientific and Statistical Committee 8 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Joint Committees Briefing on EFH EIS 9 a.m.
Habitat Committee 9 a.m.
Enforcement Consultants 4 p.m.
Klamath Fishery Management Council As necessary
Tribal Policy Group As necessary
Tribal and Washington Technical Group As necessary

TUESDAY, April 6, 2004

Council Secretariat 7 a.m.
California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Highly Migratory Species Management Team 8 a.m.
Scientific and Statistical Committee 8 a.m.

Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Klamath Fishery Management Council As necessary
Tribal Policy Group As necessary
Tribal and Washington Technical Group As necessary
Enforcement Consultants 5:30 p.m.

WEDNESDAY, April 7, 2004

Council Secretariat 7 a.m.
California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Highly Migratory Species Advisory Subpanel 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Klamath Fishery Management Council As necessary
Tribal Policy Group As necessary
Tribal and Washington Technical Group As necessary
Enforcement Consultants As necessary

THURSDAY, April 8, 2004

Council Secretariat 7 a.m.
California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Tribal Policy Group As necessary
Tribal and Washington Technical Group As necessary
Enforcement Consultants As necessary

FRIDAY, April 9, 2004

Council Secretariat 7 a.m.
California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Management Team As necessary
Salmon Advisory Subpanel As necessary
Salmon Technical Team As necessary
Tribal Policy Group As necessary
Tribal and Washington Technical Group As necessary
Enforcement Consultants As necessary

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503- 820–2280 at least 5 days prior to the meeting date.

Dated: March 16, 2004.

Bruce C. Morehead,

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

[FR Doc. 04–6227 Filed 3–18–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031604E]

South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Southeast Data and Review (SEDAR) Steering Committee will meet to discuss the SEDAR process and assessment priorities. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR Steering Committee will meet at 10 a.m. on Wednesday, April 7, 2004.

ADDRESSES: The meeting will be held at NOAA Fisheries' Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL 33149; telephone: (305)361–4200.

FOR FURTHER INFORMATION CONTACT: John Carmichael, SEDAR Coordinator, SEDAR/SAFMC, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520.

SUPPLEMENTARY INFORMATION: The South Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils; in conjunction with NOAA Fisheries, the Atlantic States Marine Fisheries Commission, and the Gulf States Marine Fisheries Commission; implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks. The SEDAR Steering Committee provides oversight of the SEDAR process and establishes assessment priorities.

The SEDAR Steering Committee will meet April 7, 2004, to discuss assessment priorities for the next 3 SEDAR cycles to be held in 2004 and 2005, review the SEDAR process, evaluate funding, and consider the role of SEDAR in assessing highly migratory stocks with particular emphasis on future coastal shark assessments.

The times and sequence specified on this agenda are subject to change. Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the SEDAR office (see **FOR FURTHER INFORMATION CONTACT**) at least 5 business days prior to the meeting.

Dated: March 16, 2004.

Bruce C. Morehead,

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

[FR Doc. 04–6229 Filed 3–18–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability for Public Comment of the Reserve Operations Plan for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: On December 4, 2000, Executive Order 13178 established the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, pursuant to the National Marine Sanctuaries Amendments Act of 2000 (Pub. L. 106–513, section 6g, November 13, 2000, 114 Stat. 2385). The Reserve extends

approximately 1200 nautical miles long and 100 nautical miles wide. Pursuant to the Executive Order, NOAA prepared a Draft Reserve Operations Plan (ROP) that focuses on priority issues and actions. The Draft ROP also provides a guide for management of the Reserve during a process that will consider designating the Northwestern Hawaiian Islands as a National Marine Sanctuary.

The Draft ROP was released in March 2002 for an extensive public review. All comments were considered, and necessary and appropriate changes were made to the document. The draft Final ROP was developed in cooperation with the State of Hawaii and the U.S. Fish and Wildlife Service with significant and extensive input from the Reserve Advisory Council.

This notice announces the availability of the draft Final ROP for public review. Given the amount of time since the initial public review, NOAA is releasing the draft Final ROP until May 15, 2004, during which time public comment will be accepted. After the close of the comment period, NOAA will consider the comments received and may make changes, if appropriate. NOAA anticipates releasing the Final ROP by Summer 2004.

DATES AND ADDRESSES: The public review starts March 19, 2004, and ends on May 15, 2004. Written comments may be sent to NWHI Coral Reef Ecosystem Reserve, 6700 Kalaniana'ole Highway, #215, Honolulu, Hawaii 96825; faxed to (808) 397–2662; or e-mailed to *nwhi@noaa.gov.* Comments will be available for public review at the office address above.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, (808) 933–8181, *nwhi@noaa.gov.*

Authority: 16 U.S.C. Section 1431 *et seq.,* Pub. L. 106–513.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: March 8, 2004.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 04–6174 Filed 3–18–04; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Command and General Staff College Advisory Committee

AGENCY: Department of the Army, DOD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name of Committee: U.S. Army Command and General Staff College (CGSC) Advisory Committee.

Date of Meeting: March 31–April 2, 2004.

Place of Meeting: Bell Hall, Room 113, 1 Reynolds Ave., Fort Leavenworth, KS 66027–1352.

Time of Meeting: 3 p.m. to 5 p.m. (March 31, 2004); 7:30 a.m. to 5 p.m. (April 1, 2004); and 7:30 a.m. to 2 p.m. (April 2, 2004).

Proposed Agenda: Review of CGSC educational program and Executive Session and Report to Commandant (10:30 a.m. to 12:30 p.m., April 2, 2004).

FOR FURTHER INFORMATION CONTACT: Dr. Robert F. Baumann, Committee's Executive Secretary, USACGSC Advisory Committee, 1 Reynolds Ave., Bell Hall, Room 119, Fort Leavenworth, KS 66027–1352; or phone (913) 684–2742.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for the Advisory Committee to examine the entire range of college operations and, where appropriate, to provide advice and recommendations to the College Commandant and faculty.

The meeting will be open to the public to the extent that space limitations of the meeting location permit. Because of these limitations, interested parties are requested to reserve space by contacting the Committee's Executive Secretary at the above address or phone number.

Brenda S. Bowen,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 04–6185 Filed 3–18–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice of closed meeting.

SUMMARY: The CNO Executive Panel is to report recommendations of the Near Term Assessment Study Group to the CNO regarding recent trends in basing, technology, alliances, and defense policy and their effect on Navy policy and operations.

DATES: The meeting will be held on Thursday, March 25, 2004, from 12 p.m. to 1 p.m.

ADDRESSES: The meeting will be held at the Chief of Naval Operations office, Room 4E542, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Commander Jon Huggins, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, (703) 681–6207.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order.

Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: March 15, 2004.

S.K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 04–6276 Filed 3–18–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 19, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Melanie_Kadlic@omb.eop.gov.*

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.

Dated: March 15, 2004.

Jeanne Van Vlandren,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Department of Education

Type of Review: Existing.

Title: Education Resource Organizations Directory (EROD).

Frequency: On occasion; annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; businesses or other for-profit; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 3,935.

Burden Hours: 664.

Abstract: The Education Resource Organizations Directory (EROD) is an electronic directory of educational resource organizations and services available at the State, regional, and national level. The goal of this directory is to help individuals and organizations identify and contact organizational sources of information and assistance on a broad range of education-related topics. Users of the directory include diverse groups such as teachers, librarians, students, researchers, and parents.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2434. 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 *vivan.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 Joseph Schubart at his e-mail address *Joe.Schubart@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. 04–6226 Filed 3–18–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR04–8–000]

Arkansas Oklahoma Gas Corporation; Notice of Petition

March 11, 2004.

Take notice that on February 13, 2004, Arkansas Oklahoma Gas Corporation (AOG) filed, pursuant to the Commission's Order issued June 13, 2001 in Docket No. PR01–8–000, a petition for approval to establish a new maximum transportation rate applicable to all of Applicant's existing and future transportation services provided under its Order No. 63 blanket certificate.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the e-Library link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–622 Filed 03–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04-210-000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 11, 2004.

Take notice that on March 8, 2004, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed effective date of April 1, 2004:

Fifty-First Revised Sheet No. 7
Fifty-First Revised Sheet No. 8

ESNG states that the purpose of this filing is to track rate changes attributable to storage services purchased from Transcontinental Gas Pipe Line Corporation (Transco) and Columbia Gas Transmission Corporation (Columbia) under their Rate Schedules GSS (Transco), LSS (Transco), FSS (Columbia) and SST (Columbia). ESNG states that the costs of the above referenced storage services comprise the rates and charges payable under ESNG's Rate Schedules GSS, LSS and CFSS. ESNG further states that this tracking filing is being made pursuant to section 3 of ESNG's Rate Schedules GSS, LSS and CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions

or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–629 Filed 3–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–179–000]

National Fuel Gas Supply Corporation; Notice of Petition for Waiver of Tariff Provisions

March 11, 2004.

Take notice that on February 27, 2004, National Fuel Gas Supply Corporation (National Fuel) tendered for filing a Petition for Waiver of Tariff Provisions in connection with proposed transportation services for Fortuna Energy Inc. (Fortuna).

National Fuel requests: (1) A waiver of its FT Rate Schedule's requirement to install real time measurement at all primary receipt points, because such measurement is not operationally required in this instance; and (2) a waiver of provisions concerning facility costs and financial assurances that would permit the parties' agreed deferred contribution-in-aid-of-construction mechanism and associated financial assurances related to a proposed facility construction project.

National Fuel is requesting that the Commission grant the requested waiver by April 1, 2004, so that the transaction may proceed as contemplated by the parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Intervention and Protests Date: March 18, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–628 Filed 3–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–211–000]

Northern Border Pipeline Company; Notice of Tariff Filing

March 11, 2004.

Take notice that on March 8, 2004, Northern Border Pipeline Company (Northern Border) tendered for filing to be part of Northern Border's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective April 7, 2004:

Second Revised Sheet No. 302
Second Revised Sheet No. 303
Original Sheet No. 303.01
Fourth Revised Sheet No. 406
Fourth Revised Sheet No. 429B
Fourth Revised Sheet No. 435

Northern Border states that the purpose of this filing is to revise the necessary tariff sheets to amend Northern Border's list of acceptable discount transactions to allow for the use of basis differentials in pricing of discounted rate transactions.

Northern Border states that copies of its filing have been sent to all of Northern Border's contracted shippers and interested State regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–630 Filed 3–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–212–000]

Northern Border Pipeline Company; Notice of Tariff Filing

March 11, 2004.

Take notice that on March 8, 2004, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective May 1, 2004:

Seventh Revised Sheet No. 234
Sixth Revised Sheet No. 235
Sixth Revised Sheet No. 235A
Second Revised Sheet No. 235A.01
Seventh Revised Sheet No. 235B
Sixth Revised Sheet No. 236

Northern Border states that the purpose of this filing is to revise Section 6 of the General Terms and Conditions of Northern Border's Tariff concerning ''Billing and Payment'' in order to: (1) Make the applicability of such section universal across all of its currently effective rate schedules; and (2) clarify that the effective due date for payment of an invoice is within ten (10) calendar days of the issuance of an invoice.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–631 Filed 3–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–535–009]

Texas Eastern Transmission, LP; Notice of Compliance Filing

March 11, 2004.

Take notice that on March 8, 2004, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, effective March 4, 2003:

Sub First Revised Sheet No. 522
Second Sub First Revised Sheet No. 528
Second Sub First Revised Sheet No. 802
Second Sub First Revised Sheet No. 816
Second Sub First Revised Sheet No. 831
Second Sub First Revised Sheet No. 863
Second Sub First Revised Sheet No. 878
Second Sub First Revised Sheet No. 890B
Second Sub First Revised Sheet No. 947
Second Sub First Revised Sheet No. 960

Texas Eastern states that the purpose of this filing is to comply with the Commission's Order issued in the captioned docket on February 27, 2004 (February 27 Order). Texas Eastern states that it is making changes in section 3.13 of its General Terms and Conditions related to the right of first refusal, as well as changes in its service agreements, as required by the February 27 Order, to conform to other tariff revisions previously made in this proceeding.

Texas Eastern states that copies of its filing have been served on all affected customers, interested state commissions, and all parties on the Commission's official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–627 Filed 3–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–632–000, et al.]

California Independent System Operator Corporation, et al.; Electric Rate and Corporate Filings

March 12, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. California Independent System Operator Corporation

[Docket No. ER04–632–000]

Take notice that on March 9, 2004, the California Independent System Operator Corporation (ISO) submitted an amendment to the ISO Tariff in order to revise the definition of PTO Service Area and to make clarifying changes to several related provisions. The ISO requests an effective date of May 8, 2004.

The ISO states it has served copies of this filing to the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, the Participating Transmission Owners, and upon all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff. The ISO also states it is posting the filing on its Web site.

Comment Date: March 30, 2004.

2. Salmon River Electric Cooperative, Inc.

[Docket No. ES04–16–000]

Take notice that on March 9, 2004, the Salmon River Electric Cooperative, Inc. (Salmon River) submitted an application pursuant to section 204 of the Federal Power Act requesting that the Commission issue a no action order with regard to Salmon River's issuances of securities to the National Rural Utilities Cooperative Finance Corporation and its guaranty of the obligation of Easy2Pay, LLC, an affiliate, to the National Cooperative Services Cooperation, that have occurred after Salmon River paid off its loans from the Rural Utilities Service without prior authorization of the Commission.

Comment Date: April 1, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of

practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502-8222 or TTY, (202) 502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–633 Filed 3–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–1397–010, et al.]

South Jersey Energy Company, et al.; Electric Rate and Corporate Filings

March 11, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. South Jersey Energy Company

[Docket No. ER97–1397–010]

Take notice that on March 8, 2004, South Jersey Energy Company (SJE) tendered for filing an updated market analysis in compliance with the Commission's order, issued February 28, 1997, in Docket No. ER97–1397–000.

Comment Date: March 29, 2004.

2. Calpine Oneta Power, L.P.

[Docket No. ER04–279–001]

Take notice that on March 8, 2004, Calpine Oneta Power, L.P. (Oneta) tendered for filing, under section 205 of the Federal Power Act and in compliance with the Order issued February 6, 2004, in Docket No. ER04–0279–000, 106 FERC ¶61,107 (2004), a revised rate schedule for Emergency Redispatch Service.

Comment Date: March 29, 2004.

3. Exelon New Boston, LLC

[Docket No. ER04–344–001]

Take notice that on March 8, 2004, Exelon New Boston, LLC (Exelon New Boston) tendered for filing the Second Amended Reliability Must Run Agreement by and among Exelon New Boston LLC, Exelon New England Holdings, LLC and ISO New England, Inc., Exelon New Boston Second Revised Rate Schedule FERC No. 3, to comply with the Commission's February 27, 2004, Order in Docket No. ER04–344–000.

Comment Date: March 29, 2004.

4. Duke Energy Corporation

[Docket No. ER04–365–001]

Take notice that on March 9, 2004, Duke Energy Corporation (Duke), submitted for filing its Interconnection Agreement with North Carolina Electric Membership Corporation designated as Second Revised FERC Electric Rate Schedule No. 273 in conformance with Order No. 614, Designation of Electric Rate Schedule Sheets, FERC Stats. & Regs. Preambles ¶31,096 (2000) filed in compliance with the Commission Order issued February 26, 2004, in Docket No. ER04–365–000.

Comment Date: March 30, 2004.

5. California Independent System Operator Corporation

[Docket No ER04–370–002]

Take notice that, on March 9, 2004, the California Independent System Operator Corporation (ISO) submitted a revised informational filing regarding the ISO's transmission Access Charge and Wheeling rates for the East Central Area (TAC Area), effective January 1, 2004. ISO states that these changes are necessary to reflect modifications to the Transmission Revenue Balancing Account Adjustments of the Cities of Anaheim, Azusa, Banning and Riverside, California.

ISO states that it has served copies of the filing on the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, the Participating Transmission Owners, and upon all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff. In addition, the ISO is posting the filing on its Web site.

Comment Date: March 29, 2004.

6. Indeck-Oswego Limited Partnership

[Docket No. ER04–493–001]

Take notice that on March 8, 2004, Indeck-Oswego Limited Partnership (Indeck-Oswego) tendered for filing an amendment to its January 29, 2004, filing in Docket No. ER04–493–000.

Comment Date: March 29, 2004.

7. Portland General Electric Company

[Docket No. ER04–604–001]

Take notice that on March 5, 2004, Portland General Electric Company (PGE) tendered for filing an amendment to their March 1, 2004, filing under PGE's FERC Electric Tariff, Original Volume No. 12. PGE states that the revisions are intended to bring their Form of Umbrella Service Agreement into conformance with current business practices.

PGE states that a copy of the filing was served upon the Oregon Public Utility Commission.

Comment Date: March 26, 2004.

8. American Electric Power Service Corporation

[Docket No. ER04–624–000]

Take notice that on March 8, 2004, American Electric Power Service Corporation (AEPSC) submitted for filing four transmission interconnection agreements on behalf of its AEP Texas Central Company and AEP Texas North Company affiliates. AEPSC states that these agreements with Rio Grande Electric Cooperative, Inc., (RGEC) Texas-New Mexico Power Company (TNMP) and the City of Brady, Texas provide for the continued interconnection of the parties systems at all of their existing points of interconnection and that no new points of interconnection are included in these agreements. AEPSC seeks an effective date of February 23, 2004, for the agreements with RGEC, January 9, 2004, for the agreement with TNMP and January 1, 2003, for the agreement with the City.

AEPSC states that it served copies of the filing on RGEC, TNMP, the City and the Public Utility Commission of Texas.

Comment Date: March 29, 2004.

9. Southern California Edison Company

[Docket No. ER04–626–000]

Take notice that on March 9, 2004, Southern California Edison Company (SCE) tendered for filing a Letter Agreement between SCE and the Blythe Energy, LLC (Blythe Energy). SCE states that the purpose of the Letter Agreement is to provide an interim arrangement pursuant to which SCE will commence the required biological and cultural studies and certain other tasks required

to prepare an application for a Certificate of Public Convenience and Necessity from the California Public Utilities Commission in anticipation of constructing, at Blythe Energy's request a 230 kV transmission line from Western Area Power Administration's Buck Blvd. Substation to a new 500–230–161 kV Substation (Midpoint Substation) to be located adjacent to or under SCE's existing Palo Verde-Devers transmission line.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and Blythe Energy.

Comment Date: March 30, 2004.

10. MidAmerican Energy Company

[Docket No. ER04–627–000]

Take notice that on March 9, 2004, MidAmerican Energy Company (MidAmerican), tendered for filing with the Commission a Transmission Operating Agreement between MidAmerican Energy Company and Nebraska Public Power District, which incorporates Amendment No. 2 to the Agreement dated December 31, 2003. MidAmerican requests an effective date of December 31, 2003, for this Agreement, however MidAmerican states that the revisions will not be implemented until January 1, 2005.

MidAmerican states that it has served a copy of the filing on the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment Date: March 30, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–634 Filed 3–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3090–008, Vermont]

Village of Lyndonville Electric Department; Notice of Availability of Final Environmental Assessment

March 11, 2004.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Vail Hydroelectric Project and has prepared a Final Environmental Assessment (FEA) for the project. The project is located on the Passumpsic River, in the Village of Lyndonville, within the county of Caledonia, Vermont. No Federal lands or facilities are occupied or used by the project.

The FEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major Federal action that would significantly affect the quality of the human environment.

A copy of the FEA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact Timothy Looney at (202) 502–5069.

Magalie R. Salas,

Secretary.

[FR Doc. E4–625 Filed 03–18–04; 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 11, 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*: 12486–000.

c. *Date Filed*: February 2, 2004.

d. *Applicant:* Twin Lakes Canal Company.

e. *Name of Project:* Bear River Narrows Hydroelectric Project.

f. *Location:* The proposed project would be located 4 miles northeast of Riverdale, Idaho, on the Bear River in Franklin County, Idaho on lands of the United States administered by the Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Michael Kunz, Twin Lakes Canal Company, 19 South State Street, Preston, ID 83263; Nicholas E. Josten, Agent for Applicant, GeoSense, 2742 St. Charles Avenue, Idaho Falls, ID 83404, (208) 528–6152.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 502–8763.

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. Please include the project number (P–12486–000) on any comments, protest, 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 run-of-river project would consist of the following: (1) An new 85-foot-high, 700-foot-long embankment dam; (2) a proposed reservoir with a normal maximum elevation of 4,732 mean sea level with a surface area of 200 acres and a gross storage of 6,800 acre-feet; (3) a powerhouse containing one turbine with a total capacity of 7 megawatts; (4) approximately 3.5 miles of new three-phase transmission line would be required to connect a three-phrase 345 kilovolt transmission line; and (4) appurtenant facilities. The project would have an annual generation of 41,300 megawatt-hours.

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.

s. *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

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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–623 Filed 03–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for New License

March 11, 2004.

a. *Type of Filing:* Notice of intent to file an application for a new license.

b. *Project No.:* 2232.

c. *Date Filed:* July 21, 2003.

d. *Submitted by:* Duke Power—current licensee.

e. *Name of Project:* Catawba-Wateree Hydroelectric Project.

f. *Location:* On the Catawba River, in Alexander, Burke, Caldwell, Catawba, Gaston, Iredell, Lincoln, McDowell, and Mecklenburg Counties, North Carolina; and on the Catawba and Wateree Rivers in the counties of Chester, Fairfield, Kershaw, Lancaster, and York, South Carolina.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee Contact:* E. Mark Oakley, Catawba-Wateree Relicensing Project Manager, Duke Power, Mail Code EC12Y, P.O. Box 1006, Charlotte, NC 28201–1006.

i. *FERC Contact:* Ron McKitrick at 770–452–3778; *Ronald.McKitrick@ferc.gov.*

j. *Effective Date of Current License:* September 1, 1958.

k. *Expiration Date of Current License:* August 31, 2008.

l. *Description of the Project:* The project comprises 11 developments.

(1) The Bridgewater development consists of the following existing facilities: (1) The Catawba dam consisting of: (a) A 120 foot-high, 3,155 foot-long earth embankment; (b) a 305 foot-long concrete gravity ogee spillway; (2) the Paddy Creek dam consisting of: A 165 foot-high, 1,610 foot-long earth embankment; (3) the 430 foot-long Paddy Creek–Linville spillway; (4) the Linville dam consisting of: A 160 foot-high, 1,325 foot-long earth embankment (5) a 6,577 acre reservoir formed by Catawba, Paddy Creek, and Linville at a normal water surface elevation of 1,200 feet above msl; (6) a 900 foot-long concrete-lined intake tunnel/penstock; (7) a powerhouse containing two vertical Francis-type turbines directly connected to two generators, each rated at 10,000 kW, for a total installed capacity of 20.0 MW; and (8) other appurtenances.

(2) The Rhodhiss development consists of the following existing facilities: (1) A 72 foot-high, 1,517 foot-long earth embankment; (2) a 800 foot-long concrete gravity ogee spillway; (3) a 3,021 acre reservoir at a normal water surface elevation of 995.1 feet above msl; (4) a powerhouse containing three vertical Francis-type turbines directly connected to three generators, two rated at 12,350 kW, one rated at 8,500 kW for a total installed capacity of 26.2 MW; and (5) other appurtenances.

(3) The Oxford development consists of the following existing facilities: (1) A 133 foot-high, 1,336 foot-long earth embankment; (2) a 550 foot-long concrete gravity ogee spillway; (3) a 3,941 acre reservoir at a normal water surface elevation of 935 feet above msl; (4) a powerhouse containing two vertical Francis-type turbines directly connected to two generators, each rated at 18,000 kW for a total installed capacity of 36.0 MW; and (5) other appurtenances.

(4) The Lookout Shoals development consists of the following existing facilities: (1) A 78 foot-high, 2,731 foot-long earth embankment; (2) a 933 foot-long concrete gravity ogee spillway; (3) a 1,208 acre reservoir at a normal water surface elevation of 838.1 feet above msl; (4) a powerhouse containing three main vertical Francis-type turbines and two smaller vertical Francis-type turbines directly connected to five generators, the three main generators rated at 8,970 kW, and the two smaller rated at 450 kW for a total installed capacity of 27.1 MW; and (5) other appurtenances.

(5) The Cowans Ford development consists of the following existing facilities: (1) A 130 foot-high, 8,738 foot-long earth embankment; (2) a 465 foot-long concrete gravity ogee spillway; (3) a 31,984 acre reservoir at a normal water surface elevation of 760 feet above msl; (4) a powerhouse containing four vertical Kaplan-type turbines directly connected to four generators rated at 83,125 kW for a total installed capacity of 285 MW; and (5) other appurtenances.

(6) The Mountain Island development consists of the following existing facilities: (1) A 140 foot-high, 2,375 foot-long earth embankment; (2) a 997 foot-long concrete gravity ogee spillway; (3) a 2,914 acre reservoir at a normal water surface elevation of 647.5 feet above msl; (4) a powerhouse containing four vertical Francis-type turbines directly connected to four generators rated at 15,000 kW for a total installed capacity of 60.0 MW; and (5) other appurtenances.

(7) The Wylie development consists of the following existing facilities: (1) A 120 foot-high, 3,155 foot-long earth embankment; (2) a 793 foot-long concrete gravity ogee spillway; (3) a 12,149 acre reservoir at a normal water surface elevation of 569.4 feet above msl; (4) a powerhouse containing four vertical Francis-type turbines directly connected to four generators rated at 18,000 kW for a total installed capacity of 67.3 MW; and (5) other appurtenances.

(8) The Fishing Creek development consists of the following existing facilities: (1) A 97 foot-high, 1,770 foot-long concrete embankment; (2) a 1,210 foot-long concrete gravity ogee spillway; (3) a 3,191 acre reservoir at a normal water surface elevation of 417.2 feet above msl; (4) a powerhouse containing five vertical Francis-type turbines directly connected to five generators two rated at 10,530 kW and three rated at 9,450 kW for a total installed capacity of 48.1 MW; and (5) other appurtenances.

(9) The Great Falls-Dearborn development consists of the following existing facilities: (1) The Great Falls dam consisting of a 103 foot-high, 675 foot-long concrete embankment; (2) the Dearborn dam consisting of a 103 foot-high, 160 foot-long concrete embankment; (3) a 1,500 foot-long concrete gravity ogee spillway; (4) a 354 acre reservoir at a normal water surface elevation of 355.8 feet above msl; (5) two powerhouses consisting of: (A) Great Falls: Containing eight horizontal Francis-type turbines directly connected to eight generators rated at 3,000 kW for an installed capacity of 24.0 MW, and (B) Dearborn: Containing three vertical Francis-type turbines directly connected to three generators rated at 15,000 kW for an installed capacity of 43.7 MW, for a total installed capacity of 67.7 MW; and (6) other appurtenances.

(10) The Rocky Creek-Cedar Creek development consists of the following existing facilities: (1) The consisting of a 69 foot-high, 1,025 foot-long earth embankment; (2) a 213 foot-long by 808 foot-long bounded by 130 foot-long U-shaped concrete gravity ogee spillway; (3) a 666 acre reservoir at a normal water surface elevation of 284.4 feet above msl; (4) two powerhouses consisting of: (A) Rocky Creek: Containing eight horizontal twin-runner Francis-type turbines directly connected to eight generators, six rated at 3,000 kW and two rated at 4,500 kW for an installed capacity of 25.8 MW, and (B) Cedar Creek: Containing three vertical Francis-type turbines directly connected to three generators, 1 rated at 15,000 kW, and two rated at 18,000 kW for an installed capacity of 44.3 MW, for a total installed capacity of 70.1 MW; and (5) other appurtenances.

(11) The Wateree development consists of the following existing facilities: (1) A 76 foot-high, 1,753 foot-long earth embankment; (2) a 1,450 foot-long concrete gravity ogee spillway; (3) a 12,891 acre reservoir at a normal water surface elevation of 225.5 feet above msl; (4) a powerhouse containing five vertical Francis-type turbines directly connected to five generators, two rated at 17,100 kW and three rated at 18,050 kW for a total installed capacity of 82.0 MW; and (5) other appurtenances.

m. 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 August 31, 2006.

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 ''FERRIS'' 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/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact

FERC Online Support as shown in the paragraph above.

Magalie R. Salas,

Secretary.

[FR Doc. E4–624 Filed 3–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission

March 11, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New minor license application.

b. *Project No.:* 632–009.

c. *Date Filed:* February 13, 2004.

d. *Applicant:* Monroe City.

e. *Name of Project:* Lower Monroe Hydroelectric Project.

f. *Location:* On Monroe Creek, 2 miles east of Monroe City, Sevier County, Utah. The project affects about 1.36 acres of Federal lands within the Fishlake National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* R. Craig Mathie, Mayor, Monroe City, 10 North Main, Monroe, Utah 84754, (435) 527–4621; John Spendlove, Jones & DeMille Engineering, 1535 South 100 West, Richfield Utah 84701, (435) 896–8266.

i. *FERC Contact:* Gaylord W. Hoisington, (202) 502–6032, or e-mail at: *gaylord.hoisington@ferc.gov*.

j. *Cooperating Agencies:* We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. *Deadline for Filing Comments and Requests for Cooperating Agency Status:* May 14, 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.

Comments and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

l. The proposed run-of-river project consist of: (1) A 10-foot-high, 13-foot-long concrete overflow-type diversion structure with an adjustable slide gate; (2) a concrete intake structure with a trash rack and a 21-inch-diameter, 100-foot-long cast iron pipeline; (3) a 8,400-foot-long, 16-inch-diameter to 20-inch diameter welded steel and ductile iron pipe penstock; (4) a 15-foot-wide, 26-foot-long reinforced concrete and concrete block power house containing a Pelton Wheel turbine with a 250-kilwatt generator and controls; (5) a 250-foot-long transmission line; and (6) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. With this notice, we are initiating consultation with the Idaho State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. *Procedural Schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter—April 2004
Issue Acceptance Letter—April 2004
Request Additional Information—June 2004
Notice of the availability of the EA—August 2004
Ready for Commission's decision on the application—December 2004

Magalie R. Salas,

Secretary.

[FR Doc. E4–626 Filed 3–18–04; 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 11, 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.:* 12485–000.

c. *Date Filed:* January 8, 2004.

d. *Applicant:* AMG Energy, LLC.

e. *Name of Project:* Claiborne Hydroelectric Project.

f. *Location:* The proposed project would be located at the U.S. Army Corps of Engineers' (Corps) existing Claiborne Lock and Dam on the Alabama River in Monroe County, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Ms. Janis Millett, Esq., Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Lincoln Square, 555 Eleventh Street, NW., Sixth Floor, Washington, DC 20004, (202) 508–3400.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 502–8763.

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. Please include the project number (P–12485–000) on any comments, protest, 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 run-of-river project using the existing Corps dam would consist of: (1) New power generating modules containing an array of turbine/generator sets retrofitted to six tainter gate bays, with an estimated combined capacity of 25 megawatts, (2) new 14.7-kilovolt transmission lines approximately 3 to 4 miles long will be constructed to the existing high voltage transmission line approximately one-half mile east of the project site, and (3) appurtenant facilities. The project would have an annual generation of 150 gigawatt-hours.

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.

s. *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

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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–632 Filed 3–18–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2004–0077; FRL–7346–3]

Asbestos-Containing Materials in Schools Rule and Revised Asbestos Model Accreditation Plan Rule; Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) EPA is seeking public comment and information on the following Information Collection Request (ICR): Asbestos-Containing Materials in Schools Rule and Revised Asbestos Model Accreditation Plan Rule (EPA ICR No. 1365.07, OMB Control No. 2070–0091). This ICR involves a collection activity that is currently approved and scheduled to expire on October 31, 2004. The information collected under this ICR involves the detection and management of asbestos in school buildings, thereby protecting the environment and public health. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for

review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPPT–2004–0077, must be received on or before May 18, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *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: Robert Courtnage, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–1081; fax number: (202) 566–0473; e-mail address: *courtnage.robert@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a local education agency (LEA) (e.g., an elementary or secondary public school district or a private school or school system); an asbestos training provider to schools and educational systems; a state education department or commission; or administer public health programs. Potentially affected entities may include, but are not limited to:

- Elementary and secondary schools (NAICS 6111), e.g., Public, private, or parochial kindergartens, primary schools, elementary schools, middle schools, junior high schools, high schools, military academies, preparatory schools, local elementary and secondary school boards, and school districts, etc.
- Administration of education programs (NAICS 92311), e.g., State education departments or commissions, county supervisors of education, education program administration, etc.
- Administration of public health programs (NAICS 92312), e.g., Health program administration, community health programs administration, environmental health program administration, government health planning and development agencies, etc.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2004–0077. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit the Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on

the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2004–0077. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2004–0077. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2004–0077. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are 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 estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

II. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Asbestos-Containing Materials in Schools Rule and Revised Asbestos Model Accreditation Plan Rule.

ICR numbers: EPA ICR No. 1365.07, OMB Control No. 2070–0091.

ICR status: This ICR is currently scheduled to expire on October 31, 2004. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40

of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

Abstract: The Asbestos Hazard Emergency Response Act (AHERA) requires LEAs to conduct inspections, develop management plans, and design or conduct response actions with respect to the presence of asbestos-containing materials in school buildings. AHERA also requires states to develop model accreditation plans for persons who perform asbestos inspections, develop management control plans, and design or conduct response actions. This information collection addresses the burden associated with recordkeeping requirements imposed on LEAs by the asbestos in schools rule, and reporting and recordkeeping requirements imposed on states and training providers related to the model accreditation plan rule.

Responses to the collection of information are mandatory (see 40 CFR part 763, subpart E). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

III. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 21.5 hours per respondent. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: 107,800.

Estimated total number of potential respondents: 107,800.

Frequency of response: On occasion.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 2,321,989 hours.

Estimated total annual burden costs: $61,701,552.

IV. Are There Changes in the Estimates from the Last Approval?

This request reflects an increase of 109,838 hours (from 2,212,151 hours to 2,321,989 hours) in the total estimated respondent burden from that currently in the OMB inventory. This increase is due to a change in the method of calculating total annual burden for LEAs. In previous ICR renewals, total burden was estimated for the remainder of the 30-year implementation period, then averaged over each of the remaining years to estimate annual burden. Because burden is expected to decline over time as schools exit the respondent universe, this method produced lower annual burden estimates for the period covered by the ICR renewal. For this ICR renewal, the average number of schools in the 3 years of the ICR renewal period are used with the unit burden estimates to derive an annual burden estimate. There is also some increase attributable to using slightly higher numbers of respondents for training providers and states/territories. The change in burden represents an adjustment.

V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: March 11, 2004.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 04–6217 Filed 3–18–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6649–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 04, 2003 (68 FR 16511).

Draft EISs

ERP No. D–BLM–A65174–00 Rating EC2, Programmatic EIS—Proposed Revision to Grazing Regulations for the Public Lands, 42 CFR Part 4100, In the Western Portion of the United States.

Summary: EPA expressed environmental concerns with potential adverse impacts to water quality and quantity, riparian habitat and related wildlife and vegetation.

EPA requested that the final EISs provide data to support predicted impacts to these resources. The final EIS should also include specific implementation information on how BLM will conduct the proposed new monitoring, assessments, and documentation.

ERP No. D–BLM–L65432–OR Rating EC2, Upper Siuslaw Late-Successional Reserve Restoration Plan, To Protect and Enhance Late-Successional and Old-Growth Forest Ecosystems, Eugene District Resource Management Plan, Northwest Forest Plan, Coast Range Mountains, Lane and Douglas Counties, OR.

Summary: EPA expressed environmental concerns and recommends that the FEIS include a full comparison and analyses of all the alternative, including adequate baseline data and disclosure of potential adverse impacts on surface water quality and late successional forests.

ERP No. D–BLM–L65438–OR Rating EC2, Andrews Management Unit/Steens Mountain Cooperative, Cooperative Management and Protection Area, Resource Management Plan, Implementation, Harney and Malheur Counties, OR.

Summary: EPA expressed concerns with adverse impacts to water quality from grazing and mining. The FEIS should fully discuss cumulative impacts

from mining and grazing and compare the environmental impacts of alternatives. The FEIS should also include detailed mitigation measures to protect aquatic resources.

ERP No. D–COE–E09810–MS Rating LO, Enhanced Evaluation of Cumulative Effects Associated with U.S. Army Corps of Engineers Permitting Activity for Large-Scale Development in Coastal Mississippi, Mississippi, Hancock, Harrison and Jackson Counties, MS.

Summary: While EPA has no objections to the proposed project, EPA did request clarification on the recreation and parking improvements proposed as part of the project.

ERP No. D–COE–L01009–ID Rating EC2, Emerald Creek Garnet Project, Proposal to Mine Garnet Reserves within the St. Maries River Floodplain near Fernwood, Walla Walla District, Issuance of Several Permits, Benewah and Shoshone Counties, ID.

Summary: EPA expressed concerns over the potential impacts of mining proposals on water quality. EPA recommends that adequate mitigation and reclamation be implemented to move the St. Maries River towards its designated beneficial uses. EPA also expressed concern over alternatives that do not avoid ecologically valuable oxbow complexes and recommended that if an alternative is selected that does not avoid oxbows, additional mitigation measures be implemented to ensure the long-term protection and restoration of wetland functions.

ERP No. D–USA–K11111–HI Rating EC2, Transformation of the 2nd Brigade, 25th Infantry Division (Light) to a Stryker Brigade Combat Team in Hawaii, Implementation, Honolulu and Hawaii Counties, HI.

Summary: EPA raised concerns that the project exceeds the Federal Air Quality Standard for particulate matter less than 10 microns in diameter (fugitive dust) from training operations. Although the DEIS offers mitigation for fugitive dust emissions, it does not quantify reductions expected from controls nor a commitment to implement such mitigation. The Final EIS should evaluate the feasibility of monitoring at sites where the Federal standard is exceeded, and adopting additional mitigation if needed. EPA raised concerns that increased fugitive dust levels may have a disproportionately high adverse effect on low-income or minority populations when transported offsite.

ERP No. DS–COE–C39016–PR Rating EO2, Port of the Americas Project, Additional Information on the Development of a Deep-Draft Terminal at the Port of Ponce to Receive Post-Panamax Ships, COE Section 10 and 404 Permits, Municipalities of Guyanilla-Penuelas and Ponce, Puerto Rico.

Summary: EPA believes that the permit applicant failed to adequately document compliance with the Clean Water Act Section 404(b)(1) Guidelines, and until further information is received, that the proposed discharges of fill material would have a substantial and unacceptable impact on aquatic resources of national importance. EPA recommended denial of the permit application for the project as currently proposed.

Final EISs

ERP No. F–FHW–J40158–MT I–15 Corridor Project, Transportation Improvements from Montana City to the Lincoln Road Interchange, Funding and U.S. Army COE Section 404 Permit Issuance, Jefferson and Lewis & Clark Counties, MT.

Summary: EPA has no objections to the preferred alternative.

ERP No. F–NOA–K91010–00 US West Coast Fisheries for Highly Migratory Species Fishery Management Plan (FMP), Approval and Implementation, Ocean Waters off the States of Washington, Oregon and California a portion of the Exclusive Economic Zone (EEZ), WA, OR and CA.

Summary: EPA continues to express concerns regarding bycatch and research actions needed to address information gaps.

Dated: March 15, 2004.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–6219 Filed 3–18–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6649–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed March 8, 2004 Through March 12, 2004

Pursuant to 40 CFR 1506.9.

EIS No. 040109, Draft EIS, FHW, NE, MO, US–159 Missouri River Crossing Project, Rehabilitate or Replace the Missouri River Bridge at Rulo, Funding and U.S. Army COE Section 404 Permit, Richardson County, NE and Holt County, MO, Comment Period Ends: May 3, 2004, Contact: Ed Kosola (402) 437–5973.

EIS No. 040110, Final EIS, AFS, UT, North Rich Cattle Allotment, Proposes to Authorize Grazing, Implementation, Logan District, Wasatch-Cache National Forest, Cache and Rich Counties, UT, Wait Period Ends: April 19, 2004, Contact: Evelyn Sibbernsen (435) 755–3620. This document is available on the Internet at: *http://www.fs.fed.us/r4/wcnf/projects/proposed/index.shtm1*

EIS No. 040111, Final EIS, AFS, WY, Lost Cabin Mine Project, Improvement of Historic Mining Road (Way 4170H) to Allow Motorized Access to the Lost Mine for Mineral Exploration, Plan-of-Operations, Medicine-Bow Routt National Forests and Thunder Basin National Grassland, Carbon County, WY, Wait Period Ends: April 19, 2004, Contact: Terry Delay (307) 326–2518. This document is available on the Internet at: *http://www.r7.fws.gov/planning*

EIS No. 040112, Draft EIS, FHW, IN, US–231 Highway Project, Improvements from I–64 and Extends to State Road 56 in Haysville, Funding, NPDES Permit and U.S. Army COE Section 10 and 404 Permits, Dubois County, IN, Comment Period Ends: May 3, 2004, Contact: Anthony DeSimone (317) 226–5307.

EIS No. 040113, Final EIS, AFS, AL, Forest Health and Red-Cockaded Woodpecker (RCW) Initiative, Implementation, Talladega National Forest, Talladega and Shoal Creek Ranger Districts, Calhoun, Cherokee, Clay, Clebourne and Talladega Counties, AL, Wait Period Ends: April 19, 2004, Contact: Suzanne Alverson (256) 362–2909.

EIS No. 040114, Draft EIS, NPS, TX, Rio Grande Wild and Scenic River General Management Plan, Implementation, Big Bend National Park, Brewster and Terrell Counties, TX, Comment Period Ends: May 18, 2004, Contact: Matthew Safford (303) 969–2898.

EIS No. 040115, Final EIS, CGD, WA, Seattle Monorail Project (SMP), Green Line 14-Mile Monorail Transit System Construction and Operation, Reviewing a Water Crossing at the Lake Washington Ship Canal Bridge and Duwamish Waterway Bridge Modification, USCG Bridge, Endangered Species Act Section 7 and U.S. Army COE Section 404 Permits Issuance, City of Seattle, WA, Wait Period Ends: April 19, 2004, Contact: Austin Pratt (206) 220–7282. This

document is available on the Internet at: *http//dms.dot.gov.*

EIS No. 040116, Final EIS, USA, LA, 2nd Armored Cavalry Regiment Transformation and Installation Mission Support, Joint Readiness Training Center (JRTC) Stryker Brigade Combat Team, Long-Term Military Training Use of Kisatchie National Forest Lands, Fort Polk, LA, Wait Period Ends: April 19, 2004, Contact: Stacy Basham-Wagner (337) 531–7458.

EIS No. 040117, Final EIS, FHW, CO, CO–9 (Frisco to Breckenridge) Highway Improvements Project to Improve a 14.5-kilometer (9-mile) stretch of CO–9 between the Towns of Frisco and Breckenridge to Decrease Travel Time, Improve Safety, Support Transportation needs of Local and Regional Travelers, Funding, Right-of-Way and U.S. Army COE Section 404 Permits, Summit County, CO, Wait Period Ends: April 19, 2004, Contact: Scott Sands (303) 969–6730.

EIS No. 040118, Final EIS, AFS, OR, Monument Fire Recovery Project and Proposed Nonsignificant Forest Plan Amendments, Implementing Four Alternatives for Recovery, Malheur National Forest, Prairie City Ranger District, Grant and Baker Counties, OR, Wait Period Ends: April 19, 2004, Contact: Ryan Falk (541) 820–3311. This document is available on the Internet at: *http://www.fs.fed/us/r6/malheur.*

EIS No. 040119, Draft EIS, NOA, AK, Bering Sea and Aleutian Islands King and Tanner Crab Fisheries and Fishery Management Plan, Implementation, in the United States Exclusive Economic Zone off Alaska, Comment Period Ends: May 3, 2004, Contact: Gretchen Harrington (907) 586–7445. This document is available on the Internet at: *http://www.fakr.noaa.gov/sustainable/crab/eis/default.htm.*

EIS No. 040120, Draft EIS, AFS, ID, South Fork Wildfire Salvage Project, Harvesting Fire-Killed and Imminently Dead Trees, Cascade Ranger District, Boise National Forest, Valley County, ID, Comment Period Ends: May 3, 2004, Contact: Keith Dimmett (208) 382–7430.

EIS No. 040121, Final Supplement, NOA, HI, GU, AS, Pelagic Fisheries of the Western Pacific Region, Fishery Management Plan, Regulatory Amendment, Management Measures to Implement New Technologies for the Western Pacific Pelagic Longline Fisheries, Hawaii, American Samoa, Guam and Commonwealth of the Northern Mariana Island, Wait Period Ends: March 29, 2004, Contact: Alvin Katekaru (808) 973–2937. Under Section 1502.9(c)(4) of the CEQ Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act the Council on Environmental Quality has Granted a 10-Day Waiver for the above EIS.

Amended Notices

EIS No. 040020, Draft Supplement, AFS, AK, Kensington Gold Project, Proposed Modifications of the 1998 Approved Plan Operation, NPDES, ESA and US COE Section 10 and 404 Permits, Tongass National Forest, City of Juneau, AK, Comment Period Ends: April 7, 2004, Contact: Steve Hohensee (907) 586–8800. Revision of FR Notice Published on 1/23/2004: CEQ Comment Period Ending 3/08/2004 has been Extended to 4/7/2004.

Dated: March 16, 2004.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–6218 Filed 3–18–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL HOUSING FINANCE BOARD

[No. 2004–N–05]

Prices for Federal Home Loan Bank Services

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) annually publishes the prices a Federal Home Loan Bank (Bank) may charge for processing and settlement of items such as negotiable order of withdrawal (NOW) and demand deposit (DDA) accounts offered to Bank members and other eligible institutions. Since no Banks currently offer item processing services directly to their members or other eligible institutions, the Finance Board is not publishing prices for Bank services for 2004.

EFFECTIVE DATE: March 19, 2004.

FOR FURTHER INFORMATION CONTACT: Gary Ternullo, Assistant Director, Office of Supervision, Risk Monitoring Division, by electronic mail at *ternullog@fhfb.gov* or by telephone at (202) 408–2904, or Edwin J. Avila, Financial Analyst, by electronic mail at *avilae@fhfb.gov* or by telephone at (202) 408–2871 or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Section 11(e) of the Federal Home Loan Bank Act (Bank Act) (12 U.S.C. 1431(e)) authorizes the Banks to: (1) Accept demand deposits from member institutions; (2) be drawees of payment instruments; (3) engage in collection and settlement of payment instruments drawn on or issued by members and other eligible institutions; and (4) have such incidental powers as are necessary to the exercise of such authority. Section 11(e)(2)(B) of the Bank Act (12 U.S.C. 1431(e)(2)(B)) requires the Finance Board to determine and regulate the charges the Banks must charge for these services. In accordance with section 11(e)(2)(B), the Finance Board annually publishes prices for Bank services in the **Federal Register**. *See* 12 CFR 975.6(c).

The Banks provide some correspondent services to their members or other eligible financial institutions, such as securities safekeeping, disbursements, coin and currency, settlement, and electronic funds transfer. However, the Banks do not provide services related to processing of items drawn against or deposited into third party accounts held by their members or other eligible financial institutions. Since no Banks currently offer item processing services directly to their members or other eligible financial institutions, the Finance Board is not publishing prices for Bank services for 2004. In addition, until a Bank resumes offering item processing services, the Finance Board will not publish a notice of prices in the **Federal Register**.

Dated: March 12, 2004.

By the Federal Housing Finance Board,

Stephen M. Cross,

Director, Office of Supervision.

[FR Doc. 04–6196 Filed 3–18–04; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the

Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 15, 2004.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Salisbury Bancorp, Inc., Lakeville, Connecticut; to merge with Canaan National Bancorp, Inc., Canaan, Connecticut, and thereby indirectly acquire The Canaan National Bank, Canaan, Connecticut.

Board of Governors of the Federal Reserve System, February 23, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–4325 Filed 3–18–04; 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 Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Naples Bancorp, Inc., Naples, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Naples, Naples, Florida.

2. Parish National Corporation, Covington, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Parish National Bank, Bogalusa, Louisiana.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. International Bancshares Corporation, Laredo, Texas; to acquire 100 percent of the voting shares of Local Financial Corporation, Oklahoma City, Oklahoma, and thereby indirectly acquire Local Oklahoma Bank, Oklahoma City, Oklahoma.

Board of Governors of the Federal Reserve System, March 15, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–6158 Filed 3–18–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Thursday, March 18, 2004.

The business of the Board requires that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 16, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–6269 Filed 3–16–04; 5:11 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Office of Governmentwide Policy; Cancellation of an Optional Form by the Department of State

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice.

SUMMARY: The Department of State cancelled the following Optional Form due to low demand in the Federal Supply Service: OF 233, Consular Cash Receipt and Record of Fees.

DATES: Effective March 19, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Cunningham, Department of State, (202) 312–9605.

Dated: March 4, 2004.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 04–6190 Filed 3–18–04; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Enhanced Surveillance for New Vaccine Preventable Diseases

Announcement Type: New.

Funding Opportunity Number: 04117.

Catalog of Federal Domestic Assistance Number: 93.185.

Key Dates:

Letter of Intent Deadline: March 29, 2004.

Application Deadline: May 12, 2004.

Executive Summary: The program will provide funding for approximately two grantees for five years (initially $550,000 per award in year one) to establish surveillance and evaluation sites that will collaborate with a larger network (the New Vaccine Surveillance Network (NVSN)) to conduct multi-site and individual projects to assess the impact of new vaccines and vaccine policies for diseases that are currently vaccine-preventable and those that are potentially vaccine preventable in the future. The current network consists of a total of three sites, one located in each New York, Tennessee, and Ohio. Two sites are in year five of a five-year project period, and one site is in year two of a five year project period. Currently, these sites conduct population-based surveillance of hospitalizations for ferbrile and acute viral respiratory illness (ARI) among children aged less than five years, surveillance for medically attended outpatient visits in community practices and emergency departments for ARIs among children aged less than five years, health service evaluation and research projects of knowledge, attitudes, and practices regarding vaccine use (including provider surveys, chart abstraction for vaccine use in community-wide provider practices, evaluation of vaccine effectiveness, and other projects.) The activities have included data collection on vaccine use, disease burden, and other variables in order to assess the impact of vaccines and related policies in populations. Although the current focus is on young children, the program is not restricted to the younger age group.

I. Funding Opportunity Description

Authority: Public Health Service Act, Section 317(1), 42 U.S.C. 247b(k)(1), as amended.

Purpose: The purpose of the program is to support a network of sites that provide surveillance and data collection on new vaccine use, the impact of the new vaccines, and new vaccine policies through enhanced inpatient and outpatient surveillance, applied epidemiologic research, and investigator-initiated investigations. This program addresses the ''Healthy People 2010'' focus area(s) of Immunization and Infectious Diseases.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Immunization Program (NIP): Reduce the number of indigenous cases of vaccine-preventable diseases (VPD).

Research Objectives: 1. To evaluate the impact of new vaccines or new vaccine policies on disease in site populations. 2. To evaluate the impact of new vaccines or new vaccine policies on administration of other vaccines. 3. To understand the burden of VPD in the population.

Activities: Awardee activities for this program are as follows:

A. Establish and operate an NVSN site. The site must be able to conduct the following activities:

(1) Establish a site with a defined catchment population, which could include either an entire state or a geographically defined area (or areas) within a state, *e.g.,* counties, in order to conduct population-based surveillance. A minimum population base of approximately 500,000 persons of all ages will be necessary to accomplish the objectives of certain NVSN activities (*e.g.,* obtaining population-based estimates of influenza and respiratory syncytial virus (RSV) in children less than five years of age.)

(2) Simultaneously conduct multiple surveillance activities and other studies *e.g.,* population-based inpatient surveillance for ARI among children less than five years old, outpatient ARI surveillance in a representative sample of children, other joint projects with one or more of the other NVSN sites (current or past projects include influenza vaccine effectiveness studies among inpatients and outpatients using case-cohort or screening method, and chart reviews from a broad sample of pediatric care providers in the community to assess uptake of pneumococcal conjugate vaccine (PCV) and its clinical impact and impact on vaccination practices (including timeliness in administering other vaccines, number of injections per vaccination visit, etc.)).

(3) Accommodate changes in specific projects and priorities as the public health system's need for information changes or new vaccines are licensed and implemented into the vaccination program.

(4) Develop projects and protocols collaboratively as part of a multi-site network with investigators at other NVSN sites and CDC. Site data will have to be integrated with data from the other sites for most projects. The ARI surveillance data from hospitals and outpatient clinics must be merged with data from other sites. Some local databases of vaccination or disease burden (*e.g.,* registries or insurance company data) may be proprietary; however, for joint NVSN projects, the data can be analyzed locally and presented together in joint publications. This requires that variables be available and defined in a way that is compatible with data from other sites. Sites must make every effort to ensure that data can be integrated with those of other NVSN sites.

(5) Conduct surveillance and other studies (*e.g.,* influenza vaccine effectiveness) with pediatric care providers in both inpatient and outpatient facilities during the first year of participation. Activities include promoting vaccination following ACIP recommendations and accurately estimating vaccination coverage in the surveillance area by conducting chart reviews in providers practices, as well as other methods deemed appropriate for particular study designs (*e.g.,* vaccine effectiveness using case-cohort or screening method).

B. Have plans for obtaining additional programmatic support to supplement assistance from CDC.

C. Utilize existing relationships with state and local health departments, and other public and private organizations to facilitate the ability to interact with health care providers and others in addressing study needs and public health issues relating to new vaccines and vaccine policies.

D. Conduct activities addressing (1) through (7) below. Specific protocols for activities conducted at more than one surveillance site must be developed collaboratively by investigators at those sites and CDC. Specific protocols for activities conducted at a single site must be approved in advance by CDC.

(1) Conduct year-round enhanced surveillance consistent with NVSN protocol (applicants can refer to NVSN publications, conference proceedings/abstracts, etc., that can be found in the literature or on websites), for selected current and prospective vaccine-preventable diseases by performing the following activities in all surveillance area hospitals that admit children less than five years old: Provide staff to screen admissions year-round and enroll children with ARI; collect information on demographics, insurance

coverage, medical history, influenza vaccination, risk factors, hospital course, admission and discharge diagnoses, and laboratory results from parents and medical records; collect nasal and throat swabs from all enrolled children; demonstrate ability to perform timely, sensitive and specific viral culture and polymerase chain reaction (PCR) testing for influenza, RSV, and parainfluenza on a large volume of collected samples; conduct quality assurance checks of the data including laboratory assays in accordance with NVSN procedures; and enter data and send it to CDC using the NVSN web-based data collection system. Site must be able to begin inpatient surveillance in the first year of participation. Have the flexibility and capability of extending surveillance to other vaccine-preventable diseases, which may require the conduct of other laboratory tests. Collect influenza vaccination data on inpatients enrolled during surveillance, including accurate vaccination data from the primary care providers and other settings where vaccine is administered. Access hospital databases for hospital admission data for periodic enrollment audits.

(2) Depending on funding and priorities, conduct surveillance similar to that described in (1) above among a population-based or representative sample of children less than five years old seen at outpatient practices in the surveillance area. Viral culture and/or PCR would be used to test specimens from outpatients. Collect influenza vaccination data on outpatients enrolled during surveillance, including accurate vaccination data from the primary care providers and other settings where vaccine is administered.

(3) As needed, and depending on funding and priorities, study the impact of incorporating new vaccines on provider policies, practices, and utilization. Collect data from pediatric outpatient care providers to document the impact of new vaccines recommended for routine use among children, potentially including combination vaccines. Applicants may include, but are not limited to, a description of the number of vaccine and injections offered at visits during the first two years of life; vaccine-specific coverage rates of all recommended vaccines at specified ages, both before and after incorporating new vaccines; the number of visits used to complete administration of all recommended vaccine by ages one and two; and revenues and costs associated with incorporating new vaccines in practice.

(4) As needed, and depending on priorities, access hospital, clinic and other databases that will provide important administrative and patient level data for surveillance and other studies.

(5) Depending on funding and priorities, in addition and as a related or separate effort to influenza vaccination data collection under D(1) and D(2) activities, immunization data should be collected using methods that enable the NVSN to estimate accurately vaccine coverage and uptake for the defined site population, overall and for important subgroups. Applicants must have sufficiently extensive and established collaboration with pediatric provider practices in the catchment area in order to be able to estimate coverage in the first year of site's participation.

(6) As needed, possibly on an annual basis (including the first year of participation), and depending of funding and priorities, evaluate influenza vaccine effectiveness/efficacy. Examples of current ongoing evaluation of vaccine effectiveness using NVSN inpatient and outpatient surveillance cases include case-cohort (screening method) studies that obtain vaccination coverage by conducting chart reviews in provider practices throughout the catchment counties, and also by county-wide random digit dial telephone household surveys with provider validation of vaccination. In order to obtain accurate estimates, applicants must have sufficiently extensive and established collaboration with pediatric provider practices in the catchment area such that all could be considered for inclusion in chart reviews. Other childhood vaccinations would also be collected during the chart reviews.

(7) Depending on funding and priorities, develop and conduct other applied epidemiologic and/or health services research projects related to new vaccine introduction. Examples of completed or current projects include: cost effectiveness of influenza vaccination; analyses of Medicaid and private insurance databases to assess the impact of PCV on the burden of pneumococcal disease-related outcomes; survey of provider attitudes and practices regarding PCV; a feasibility study of implementing a recommendation for universal influenza vaccination of young children 6–35 months old through focus groups, national provider survey, time and motion study in seven provider practices, and a database analysis.

E. Routinely evaluate progress in achieving the purpose of this program.

F. Analyze and interpret data from NVSN projects, and publish and disseminate findings in collaboration with CDC.

In a cooperative agreement, CDC staff are substantially involved in the program activities, above and beyond routine grant monitoring.

CDC activities for this program are as follows:

- Provide CDC investigator(s) to monitor the NVSN cooperative agreement as protocol investigators and project officer(s). At least one CDC investigator will be assigned to each NVSN project.
- Provide consultation, scientific, and technical assistance in designing and conducting individual NVSN projects.
- Assist in the development of research protocols for Institutional Review Boards (IRB) review by all cooperating institutions participating in the research projects. For each protocol, the CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.
- As needed and arranged with investigators, perform laboratory evaluation of specimens or isolates (*e.g.,* molecular epidemiologic studies, evaluation of diagnostic tools) obtained in NVSN projects; and integrate results with data from other NVSN sites.
- Manage, maintain, and update the secure, encrypted CDC Web-based system which is used by the NVSN for data entry of ARI surveillance data at the sites, transfer of data from sites to CDC, merging of data from NVSN sites, and creation of data sets and data summaries which are accessible by each site. Each NVSN site will be able to download only its own site's raw data through the web-based system. Merged datasets will be shared among sites for approved analyses that require multi-site data.
- Analyze and interpret data from NVSN projects, and publish and disseminate findings in collaboration with NVSN site investigators.
- Participate as co-investigators on project activities including research design, methods, obtaining CDC IRB approval of protocols, data collection, data analysis, and co-authoring manuscripts.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $1,100,000.

Approximate Number of Awards: Two.

Approximate Average Award: $550,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

Floor of Award Range: None.

Ceiling of Award Range: $575,000 (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: August, 2004.

Budget Period Length: 12 Months.

Project Period Length: Five years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies, such as:

- Public nonprofit organizations
- Private nonprofit organizations
- Universities
- Colleges
- Research institutions
- Hospitals
- Community-based organizations
- Faith-based organizations
- Federally recognized Indian tribal governments
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

The existing site in Ohio, which is in Year 2 of 5, is based in Cincinnati with a Hamilton County catchment area. Applicants with catchment populations from this Cincinnati area will not be considered eligible to apply. New York and Tennessee sites are eligible.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

CDC will accept and review applications with budgets greater than the ceiling of the award range.

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

Applicants must demonstrate their capability and organizational ability to perform functions under Activities. In addition to describing inpatient and outpatient surveillance, applicants must describe activities listed under D(1) through D(4), describe proposed methods to accurately estimate vaccination coverage as listed in D(5), and propose at least one specific project from each of D(6) and D(7) under Activities. Each specific proposal for D(5)–D(7) activities must be clearly identified in a distinct portion of the Operational Plan and cannot exceed four pages.

Individuals Eligible to Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instruction are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- Maximum number of pages: two
- Font size: 12-point unreduced
- Single spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Written in plain language, avoid jargon

Your LOI must contain the following information:

- Descriptive title of the proposed research
- Name, address, E-mail address, telephone number and fax phone number of the Principal Investigator
- Names of other key personnel
- Participating institutions
- Number and title of this Program Announcement (PA)

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact PGO–TIM staff at 770–488–2700, or contact GrantsInfo, Telephone (301) 435–0714, e-mail: *GrantsInfo@nih.gov.*

Your research plan should be single spaced and address activities to be conducted over the entire project period. Also refer to III.3 Other, for description of required application content.

Descriptions of D(5)–D(7) activities must include objectives, methods, analytic approach, and illustrative sample size calculations and/or confidence intervals recognizing that data from two or more sites may be aggregated for analysis. Although the specific activities described address distinct issues and needs, they may be implemented in an integrated manner such that staff members work on more than one activity, and supplies and equipment are shared, etc. The specific project proposal(s) will be reviewed as a potential project that could be conducted under the award, but the NVSN may choose not to conduct the project depending on other NVSN interests, needs, and resources.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of

the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm*.

This PA uses just-in-time concepts.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

LOI Deadline Date: March 29, 2004.

A Letter of Intent (LOI) is required for this Program Announcement. The LOI will not be evaluated or scored. Your LOI will be used to estimate the potential reviewer workload and to avoid conflicts of interest during the review. If you do not submit a LOI, you will not be allowed to submit an application.

Application Deadline Date: May 12, 2004.

Explanation of Deadline: Applications must be received in the: Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1040, MSC 7710, Bethesda, MD 20892–7710. Bethesda, MD 20817 (for express/courier service) by 4 p.m. eastern time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, contact your courier.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Construction.
- Real estate lease or purchase.
- Vehicle purchase.
- Vehicle lease, other than rental associated with travel for this project.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Awards will not allow reimbursement of pre-award costs.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: Beth Gardner, Centers for Disease Control and Prevention, National Immunization Program, 1600 Clifton Road, MS E–05, Atlanta, GA 30333, Telephone Number: 404–639–6101, FAX: 404–639–0108, E-mail: *BGardner@cdc.gov*.

Application Submission Address: Submit the original and three hard copies of your application by mail or express delivery service to: Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1040, MSC 7710, Bethesda, MD 20892–7710, Bethesda, MD 20817 (for express/courier service).

At the time of submission, two additional copies of the application must be sent to: Scientific Review Administrator Beth Gardner, Centers for Disease Control and Prevention, National Immunization Program, 1600 Clifton Road, MS E–05, Atlanta, GA 30333, Telephone Number: 404–639–6101, FAX: 404–639–0108, E-mail: *BGardner@cdc.gov*.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The criteria are as follows:

Capability demonstration: The application will be evaluated based on response to all lettered and numbered items listed under Activities, and demonstration of capability of conducting these activities.

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? The application will be evaluated based on:

- Methodology for conducting population-based surveillance among patients at all surveillance area hospitals. Applicant must provide supporting evidence that surveillance would be population-based.
- Methodology for conducting surveillance among outpatients at a representative sample of outpatient practices.
- Methodology for conducting collection of influenza vaccination data and data for other vaccines that will enable accurate estimation of vaccine coverage in the population and for important subgroups.
- Methodology for conducting influenza vaccine effectiveness studies.
- Quality of the proposed additional research projects, as requested in IV.2 above, regarding objectives, methodology/design, feasibility, and collaboration and participation of partner organizations and CDC.

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

- The extent to which the applicant's plan for establishing and operating the NVSN site clearly describes the organizational structure and procedures and identifies all participating persons and groups including identifying key professional staff and their roles and responsibilities.
- Past experience of key professional staff in conducting work similar to that proposed in this announcement.
- Identifying key professional personnel from other collaborating organizations, agencies, etc. outside of the applicant's agency who will participate in NVSN activities, with roles described.
- Description of support staff and services to be assigned to the NVSN.
- Description of approach to flexible staffing to accommodate the changing requirements of NVSN projects that may occur due to changing public health needs and new vaccines or vaccine policies.

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support.

- Past experience working with pediatric inpatient facilities and outpatient care providers in conducting epidemiologic and health services research of vaccines or other health care practices or interventions.
- The ability to develop and maintain strong cooperative relationships broadly with both public and private vaccine providers at the NVSN site, including public health agencies, academic centers, managed care organizations, and community organizations.
- Support from non-applicant participating agencies, institutions, organizations, laboratories, consultants, etc. indicated in applicant's operational plan. Applicant should provide (in an appendix) letters of support which clearly indicate collaborators' willingness to contribute to NVSN activities. Do not include letters of support from CDC personnel.
- Clear definition of the geographic area and population base in which the NVSN site will operate.
- Description of the demographics of the proposed population base including a description of various special populations as they relate to the proposed activities of the NVSN site.
- Description of vaccination providers within the NVSN site, and availability of or participation in a vaccination registry.

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score: The extent to which the applicant demonstrates:

- A clear understanding of the background and objectives of this cooperative agreement program.
- A clear understanding of the requirements, responsibilities, problems, constraints, and complexities that may be encountered in establishing and operating the NVSN site.
- A clear understanding of the roles and responsibilities of participation in the NVSN network.
- Knowledge and understanding of current research and activities performed in this area, past studies, and existing literature.

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? This will not be scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research. In addition the application will be evaluated on the extent to which the line-item budget is detailed, clearly justified, consistent with the purpose and objectives of the program, and reflects both Federal and non-Federal (*e.g.,* State funding) shares of total cost for the NVSN site. If requesting funds for any contracts, provide the following information for each proposed contract: name of proposed contractor, breakdown and justification for estimated costs, description and scope of activities to be performed by contractor, period of performance, and method of contractor selection (*e.g.,* sole-source or competitive solicitation). Provide a separate detailed budget for inpatient surveillance and outpatient surveillance and epidemiological and/or health services research studies, with accompanying justification of all operating expenses that is consistent with the stated objectives and planned activities of the project.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Center for Scientific Review, and for responsiveness by the NIP. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the PA will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section convened by NIP in accordance with the review criteria listed above. As part of the initial merit review, all applications may:

- Undergo a process in which only those applications deemed to have the highest scientific merit, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive a programmatic second level review by the NIP.

Award Criteria: Criteria that will be used to make award decisions include:

- Scientific merit (as determined by peer review)
- Availability of funds
- Programmatic priorities

V.3. Anticipated Announcement and Award Dates

Announcement date: March 2004.
Award date: August 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the

recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html*.

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements
- AR–2 Requirements for Inclusion of Woman and Racial and Ethnic Minorities in Research
- AR–6 Patient Care
- AR–7 Executive Order 12372
- AR–8 Public Health System Reporting Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–14 Accounting System Requirements
- AR–15 Proof of Non-Profit Status, if applicable
- AR–22 Research Integrity
- AR–23 States and Faith-Based Organizations
- AR–24 Health Insurance Portability and Accountability Act Requirements

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm*.

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Semi annual progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC Web site) no less than 30 days before the end of the first half of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report and annual progress report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact:

Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For scientific/research issues, contact: Carolyn Bridges, Centers for Disease Control and Prevention, National Immunization Program, ESD, 1600 Clifton Road, MS E–61, Atlanta, GA 30333, Telephone: 404–639–8689, E-mail: *CBridges@cdc.gov.*

Marika Iwane, Extramural Project Officer, Centers for Disease Control and Prevention, National Immunization Program, ESD, 1600 Clifton Road, MS E–61, Atlanta, GA 30333, Telephone: 404–639–8769, E-mail: *MIwane@cdc.gov.*

For questions about peer review, contact: Beth Gardner, Scientific Review Administrator, Centers for Disease Control and Prevention, National Immunization Program, OD, 1600 Clifton Road, MS E–05, Atlanta, GA 30333, Telephone: 404–639–6101, E-mail: *BGardner@cdc.gov.*

For financial, grants management, or budget assistance, contact: Peaches Brown, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2738, E-mail: *POBrown@cdc.gov.*

VIII. Other Information

http://www.cdc.gov/nip.

Sandra R. Manning, CGFM,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–6168 Filed 3–18–04; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10082 OMB #0938–0898]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. The unanticipated lapse in the approval of this collection prior to implementation has resulted in the necessity to have the collection reinstated on an emergency basis. The information collection to be reinstated has not been modified from the version submitted to OMB under the regular PRA clearance process and approved on July 28, 2003.

CMS is requesting OMB review and approval of this collection within 15 days from the date of this publication, with an 180-day approval period.

Written comments and recommendations will be accepted from the public if received by the individuals designated below within 14 days from the date of this publication.

Type of Information Collection Request: Reinstatement without change.

Title of Information Collection: Survey of States Performance Measurement Reporting Capability.

Form No.: CMS–10082 (OMB# 0938–0898).

Use: Because of the wide variability of Medicaid and SCHIP financing and service delivery approaches, there is little common ground from which to develop uniform reporting on performance measures by states. While CMS has decided on the first seven measures to be used, the ability of states to calculate those measures using HEDIS directly or HEDIS specifications (*e.g.*, when calculating measures from fee-for-service claims data) is highly variable. Current efforts are focused on assessing the capability of each state to report on the selected measures and on helping states to make necessary adjustments in order to be able to report measures uniformly so that state-to-state comparisons can be made. To accomplish this, states will be requested to report available numerator and denominator data for the seven core HEDIS measures via a survey instrument created for this purpose. The data will be requested for each state's Medicaid and SCHIP programs by delivery system.

Frequency: Once.

Affected Public: State, local, and tribal government.

Number of Respondents: 51.

Total Annual Responses: 51.

Total Annual Hours: 2,360.

We have submitted a copy of this notice to OMB for its review of these information collections.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Jburke3@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–4194.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, within 14 days of publication of this notice:

Centers for Medicare and Medicaid Services,

Office of Strategic Operations and Regulatory Affairs, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850, Fax Number: (410) 786–0262, Attn: Melissa Musotto CMS–10082;

and,

Office of Information and Regulatory Affairs,

Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Katherine T. Astrich, CMS Desk Officer 0938–0898.

Dated: March 12, 2004.

John P. Burke, III,

CMS Reports Clearance Officer, Paperwork Reduction Act Team Leader, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–6253 Filed 3–16–04; 4:11 pm]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: Open Door]

Agency Information Collection Activities: March 29, 2004 Special Open Door Listening Session—Proposed Collection—Comment Request for Federal Reimbursement of Emergency Health Services Furnished to Undocumented Aliens

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In support of the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, will be holding an open door listening session to solicit input from the public on the issues surrounding the implementation of recently enacted legislation on Federal reimbursement of Emergency Health Services Furnished to Undocumented Aliens.

Interested persons are invited to provide input on the development of methods and procedures for implementing section 1011 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, regarding Federal reimbursement of emergency health services furnished to undocumented aliens. The primary topics for consideration are: How to obtain reliable information on the amount or volume of emergency services provided to undocumented aliens; how to ensure that the methods or procedures selected to implement this provision do not impose requirements on providers that are inconsistent with their EMTALA obligations; and, how to reliably determine or approximate individual hospitals', physicians', or ambulance providers' un-reimbursed costs for providing emergency care for undocumented aliens without imposing costly and burdensome reporting and record-keeping requirements. The format of an Open Door Listening Session is such that there will not be an opportunity for CMS to directly respond to individual comments, testimony, or questions posed.

DATES: The open door listening session announced in this notice will be held on Monday, March 29, 2004, from 2 p.m. to 4 p.m., E.S.T. at the CMS Baltimore Central Site campus.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1867 of the Social Security Act (EMTALA) requires a hospital that has an emergency department to provide appropriate medical screening to individuals who request examination or treatment to determine whether or not an emergency medical condition exists. If such a condition does exist, the hospital is required to stabilize the condition and/or provide an appropriate transfer, regardless of the individual's ability to pay for treatment.

Undocumented aliens are frequently unable to pay for the EMTALA-required care they receive from hospitals and associated physician and ambulance services

Section 1011 of the Medicare Modernization Act (Pub. L. 108–173) provides $250 million per year for FY 2005–2008 for payments to eligible providers for emergency health services for undocumented aliens. Two-thirds of the funds will be divided among all 50 states (and the District of Columbia) based on their relative percentages of undocumented aliens. One-third will be divided among the six states with the largest number of undocumented alien apprehensions. The data used to identify these states will come from the Department of Homeland Security.

The amounts of money set aside for each state will be paid directly to eligible providers. The Secretary must directly pay hospitals, physicians, and ambulance providers for the costs of providing emergency health care required under EMTALA and related hospital inpatient, outpatient, and ambulance services (including those operated by the Indian Health Service

and Indian Tribes and Tribal organizations) to undocumented aliens.

Payments will be made quarterly and may be made based on advance estimates with retrospective adjustments. The Secretary must establish a process no later than September 1, 2004, for eligible providers to request payments. The process must include measures to ensure that the payments are not inappropriate, fraudulent, or excessive.

CMS will hold this special open door listening session to gather your input related to the implementation of this new provision and to allow interested parties to hear and be heard by other members of the healthcare industry.

The primary topics for consideration are: how to obtain reliable information on the amount or volume of emergency services provided to undocumented aliens; how to ensure that the methods or procedures used to implement this provision do not impose requirements on providers that are inconsistent with their EMTALA obligations; and, how to reliably approximate or determine individual hospitals', physicians' or ambulance providers' un-reimbursed costs on providing emergency care for undocumented aliens without imposing costly and burdensome reporting and record keeping requirements.

II. Participation

We ask that all interested persons who wish to present their information prepare to speak within a restricted time limit that will depend upon the number of requests we receive by close of business Wednesday, March 24th, 2004 (see RSVP information below). Telephone call-in participants will be given an opportunity to speak as well, and if necessary will be under similar time limitations.

CMS additionally requests that interested parties please prepare their comments or input in written form and submit this information to the same (RSVP) e-mail address as listed below. If not possible at the time of RSVP, we request that you bring a hard copy of your written material for collection at the meeting in Baltimore. There are two ways to participate, by phone or in-person.

To participate by phone:

Dial: 1–800–837–1935 & Reference Conference ID: *614131*

Persons participating by phone are not required to RSVP.

Note: TTY Communications Relay Services are available for the Hearing Impaired. For TTY services dial 7–1–1 or 1–800–855–2880 and for Internet Relay services click here *http://www.consumer.att.com/relay/which/index.html.* A Relay Communications Assistant will help.

To participate in-person at the CMS Baltimore Site, an RSVP is required.

To register, please RSVP (by close of business Wednesday, March 24, 2004) via e-mail to *Section 1011@cms.hhs.gov* if you plan to attend. Please include the word ''Registration'' in the subject line of your message, send us your name along with the name of your organization and contact information, and indicate whether or not you plan to speak.

Please arrive no later than 1:30 p.m. Photo identification is required at security points.

ADDRESSES: CMS Single Site Building, Auditorium, 7500 Security Boulevard, Baltimore, MD 21244.

Map & Directions: *http://cmsnet.cms.hhs.gov/hpages/ocsq/cmsdirections-north.htm.*

ENCORE: 1–800–642–1687; Conf. ID #614131

''Encore'' is a recording of this call that can be accessed by dialing 1–800–642–1687 and entering the Conf. ID beginning on *March 30, 2004.* The recording expires after 4 days. For Forum Schedule updates, Listserv registration and Frequently Asked Questions please visit our Web site at *http://www.cms.hhs.gov/opendoor/.*

FOR FURTHER INFORMATION CONTACT: George Morey, (410) 786–4487, e-mail address Section *1011@cms.hhs.gov* (include the word ''Question'' in the subject line of your message) or by fax (410) 786–9963.

Dated: March 16, 2004.

John P. Burke, III,

Paperwork Reduction Act Team Leader, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–6271 Filed 3–18–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Children and Families

Notice of Intent To Establish an Advisory Committee on Head Start Accountability and Educational Performance Measures

AGENCY: Administration on Children, Youth and Families, ACF, DHHS.

ACTION: Notice.

SUMMARY: This Notice of Intent is being published in accordance with section 9(a)(2) of the Federal Advisory Committee Act. Notice is hereby given that the Secretary of the Department of Health and Human Services intends to establish an Advisory Committee on Head Start Accountability and Educational Performance Measures.

FOR FURTHER INFORMATION CONTACT: Michele Plutro, Head Start Bureau, at (202) 205–8573.

SUPPLEMENTARY INFORMATION: In accordance with section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), title 41 of the Code of Federal Regulations, section 102–3.65 and the General Services Administration (GSA) rule on Federal Advisory Committee Management, the Secretary of the Department of Health and Human Services (HHS) has determined that the establishment of the Advisory Committee on Head Start Accountability and Educational Performance Measures (the ''Committee'') is in the public interest in connection with supporting the school readiness of low-income children and overall effectiveness and purpose of the Federal Head Start program.

The purpose of the Committee is to help assess the progress in developing and implementing the Head Start National Reporting System (NRS) and provide recommendations for integrating the NRS with other on-going assessments of the effectiveness of the program. The Committee will work in coordination with the existing Technical Work Group (TWG) which helped develop the NRS, and make recommendations for how the NRS can be included in the broader assessment frame found in the Family and Child Experiences Survey (FACES), the national Head Start Impact Study, Head Start's Performance Based Outcome System, and the ongoing evaluation of the Early Head Start program.

The Committee shall consist of not more than ten (10) members including the Chair and Co-Chair. Appointments shall be made by the Secretary from authorities knowledgeable and expert in the fields of childhood development and psychometrics, assessment of child progress and evaluation of program service delivery. The Department will give close attention to equitable geographic distribution and to minority and female representation in making appointments to the Committee so long as the effectiveness of the Committee is not impaired.

The Committee shall meet three times unless, after consultation with the Chair or Co-Chair, the Secretary determines that additional meetings are necessary to fulfill the purpose of the Committee. All meetings shall be at the call of the

Chair or Co-Chair. An official of the Federal Government shall be present at all meetings. Meetings shall be open to the public. Advance notice of all meetings shall be given to the public. Meetings shall be conducted and records of proceedings shall be kept in accordance with all applicable laws and Departmental regulations.

Unless renewed by appropriate action prior to its expiration, the Secretary's Advisory Committee on Head Start Accountability and Educational Performance Measures shall terminate on February 27, 2006.

Dated: March 11, 2004.

Wade F. Horn,

Assistant Secretary for Children and Families.

[FR Doc. 04–6202 Filed 3–18–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Compassion Capital Fund Demonstration Program

Federal Agency Name: Administration for Children and Families, Office of Community Services.

Funding Opportunity Title: Compassion Capital Fund Demonstration Program.

Announcement Type: Competitive Grant—Initial.

Funding Opportunity Number: HHS–2004–EJ–0002.

CFDA Number: 93.647.

DATES: May 18, 2004.

I. Funding Opportunity Description

The Administration for Children and Families (ACF), Office of Community Services (OCS) announces that competing applications will be accepted for new grants pursuant to the U.S. Department of Health and Human Services (HHS) Secretary's Compassion Capital Fund (CCF) authorized under section 1110 of the Social Security Act governing Social Services Research and Demonstration activities and the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2004, Pub. L. 107–116, Title II. Pursuant to this announcement, OCS will award funds to experienced intermediary organizations to deliver training and technical assistance to small faith-based and community organizations. Intermediaries will assist these organizations to increase their effectiveness, enhance their ability to provide social services, expand their organizations, diversify their funding sources, and create collaborations to better serve those most in need. In addition, recipients of awards under this announcement must issue sub-awards to a number of qualified faith-based and community organizations for a variety of capacity-building purposes.

A. Background

Faith-based and community organizations have a long history of providing an array of important services to people in need in the United States. These organizations possess unique strengths that the government cannot duplicate. As a result, they are well positioned to assist individuals and families with the most pressing needs, such as the homeless, prisoners reentering the community, children of prisoners, at-risk youth, addicts, elders in need, and families in transition from welfare to work. In addition, faith-based and community organizations provide marriage education and preparation services to help couples who choose marriage for themselves develop the skills and knowledge to form and sustain healthy marriages.

In recognition of this history and ability, President Bush believes it is in the public's interest to broaden Federal efforts to work with faith-based and community organizations and has made improving funding opportunities for such organizations a priority. CCF is a key part of the effort to enhance and expand the participation of faith-based and community groups serving those in need. Intermediary organizations awarded funds under this announcement will serve as partners to both the Federal government and to the faith-based and community organizations that they assist. The intermediaries will represent a diverse set of affiliations, and will assist community-level organizations that have a range of service goals, target populations, affiliations, and beliefs.

B. Program Purpose and Objectives

The goal of CCF is to assist faith-based and community organizations to increase their effectiveness, enhance their ability to provide social services, expand their organizations, diversify their funding sources, and create collaborations to better serve those most in need. This will be accomplished through the funding of experienced intermediary organizations in well-defined geographic locations with a proven track record of providing technical assistance to smaller faith-based and community organizations in their communities. These intermediary organizations will serve as a bridge between the Federal government and the faith-based and community organizations that this program is designed to assist.

Intermediary organizations will provide two services within their communities:

1. Technical assistance to faith-based and community organizations; and
2. Financial support—through sub-awards—to some subset of the faith-based and community organizations in their communities.

Technical Assistance

ACF seeks intermediary organizations with demonstrated expertise and a proven track record in working with and providing technical assistance to faith-based and community organizations in a variety of areas. Technical assistance activities funded under CCF are to be conducted at no cost to interested faith-based and community organizations. Applicants must have demonstrated experience in the delivery of capacity-building assistance to smaller organizations in several of the following areas: strategic planning, financial management, board development, fund-development, and outcome measurement. Additionally, there is a range of other needs that may appropriately be provided by the intermediary organizations awarded funds under this announcement. The following list is meant to be illustrative, not exhaustive.

- Legal assistance in various areas such as the process of incorporation or obtaining tax-exempt status;
- Needs assessments to identify internal areas needing improvement or areas in which to develop or expand community services to address service gaps;
- Development of internal operating controls and procedures related to all aspects of business management;
- Facilitation of networks, service coordination, and resource sharing among organizations;
- Incorporation of ''best practices'' in priority social service areas;
- Expanding outreach and client screening, intake or tracking methods;
- Volunteer management;
- Human resources.

In addition, intermediaries must be established organizations with well-developed connections to and working relationships with faith-based and community organizations in well-defined geographic locations. Typically, these intermediary organizations will be located in the same communities as the faith-based and community organizations that they serve.

Technical assistance should be provided on a long-term, on-going basis to smaller organizations, rather than through single or short-term contacts (such as a nationwide series of seminars or conferences).

Sub-Awards

The program goals will be further accomplished through the issuance of sub-awards by the funded intermediary organizations to a diverse set of small faith-based and community organizations that seek to increase program and organizational effectiveness for a 12-month period. The total amount of sub-awards proposed in an intermediary's application must represent at least one-quarter or 25 percent of the total Federal funds. The issuance of sub-awards must be consistent with the following principles:

- Sub-award recipients must be chosen through a fair and open competitive process.
- Sub award recipients may not be pre-selected.
- The awarding process must be a fair and open competition and include outreach to both faith-based and community organizations.
- Intermediary organizations must provide on-going technical assistance and capacity-building support to the organizations to which they issue sub-awards.
- The criteria for selection of sub-awardees must not include consideration of the religious nature of a group or the religious nature of the program it offers.
- Priority for sub-awards should be given to organizations that historically have not received grants from the Federal government.
- Priority for sub-awards should be given to organizations implementing program(s) in several priority areas including: the homeless, elders in need, at-risk youth, families in transition from welfare to work, those in need of intensive rehabilitation such as addicts or prisoners, and organizations that provide marriage education and preparation services to help couples who choose marriage for themselves develop the skills and knowledge to form and sustain healthy marriages.
- Intermediaries must not require sub-award applicants to provide matching funds or give them a preference in the selection process if they offer matching funds in their applications.
- Intermediaries must not require sub-award applicants to have 501(c)(3) status or to identify a sponsoring organization with 501(c)(3) status.
- Organizations that partner with an intermediary to deliver technical assistance or provide cost-sharing funds for the proposed project are not to be eligible for sub-awards, unless approved by the Administration for Children and Families.
- Sub-awards must be in amounts manageable for a small organization.
- The central focus of an intermediary's proposed sub-award concept must be capacity-building activities that further the sustainability of sub-awardees' social service efforts. Sub-awards should be used to assist organizations in differing stages of development. For example, funds may be provided to fledgling organizations to improve their basic functions, such as attaining 501(c)(3) status or developing sound financial systems. Sub-awards may also be provided to promising organizations to expand the reach of existing programs. Such funding would allow a promising organization to move to a higher level of service, where it is able to assist more people on a sustainable basis. Uses for such funding might include: employing a key additional staff person, moving to a larger or better-equipped facility, upgrading case management or informational technology capabilities, or supporting a new social service.
- Sub-awards must not be used to provide direct services, but rather improve the sub-awardee's efficiency and capacity. For example, an organization that distributes food to the poor should not receive a sub-award to purchase additional food. Nor, for example, should an organization that provides substance abuse treatment services use additional funds to provide the same services to more people. Although using the sub-awards for direct service would enable organizations to assist additional individuals, they would not further the goals of improving an organization's sustainability, efficiency, or capacity. Rather, the organizations would simply use additional funds in the same way they used existing funds, without fundamentally changing or improving their services.

Plan For Providing Technical Assistance and Sub-Awards

As part of its application to ACF, each applicant must submit a basic outline of its sub-award approach, describing the kinds of organizations in its community that would benefit and examples of activities that it expects these groups will undertake with sub-award funding. Intermediary organizations that receive CCF awards will be required to develop, with guidance from and in consultation with ACF, a detailed plan for this process within 60 days of receipt of an award under this announcement. ACF must review and approve this plan prior to the issuance of any sub-awards using Federal funds awarded under this announcement. Intermediary organizations must report on the use of funds for sub-awards as they do for other types of expenditures of Federal funds received as a result of an award under this announcement and as specified in the Cooperative Agreement. Intermediary organizations will also be required to develop, with guidance from and in consultation with ACF, a plan within six months of receipt of an award for working with sub-awardees to develop outcome measures and to evaluate the activities supported by the sub-awards.

Applicants must coherently describe their plan both for providing technical assistance and sub-awards. In providing technical assistance and in making sub-awards, these plans must provide for the establishment of ongoing supportive relationships with those faith-based and community organizations served, rather than single or short-term interactions. Technical assistance conferences and workshops may be parts of an applicant's plan, but they must not be its sole focus. The plan must also describe how applicants will develop and build upon existing long-term supportive relationships with the faith-based and community organizations within their communities.

Furthermore, approved applicants must be willing to work closely with ACF, and any entities funded by ACF, to coordinate, assist, or evaluate the activities of the intermediary organizations providing technical assistance and issuing sub-awards. Proposed budgets should include the cost of travel-related expenses for two key personnel with responsibility for the CCF award to attend a two-day orientation workshop with Federal officials in Washington, DC. This meeting will focus on orientation to Federal objectives for the project, information about related activities supported by HHS and other Federal agencies, Federal grants management requirements, and coordination between and among the approved intermediary organizations and other entities funded by ACF to be involved in the CCF initiative.

ACF expects to work closely with organizations that receive funding to ensure that CCF monies are used appropriately and in the most effective manner possible. It has also entered into a contract with an organization that serves as the National Resource Center

(herein also referred to as the National Center) for these intermediaries. Under this contract, the National Center provides CCF intermediaries with support and technical assistance. Funded organizations must expect to interact with both ACF and the National Center on an on-going basis and modify their technical assistance and sub-award plans in coordination with ACF to address barriers to faith-based participation in Federally-sponsored programs.

II. Award Information

Funding Instrument Type: Cooperative Agreement.

Anticipated Total Priority Area Funding: $7.0 million.

Anticipated Number of Awards: 12 per budget period.

Ceiling on Amount of Individual Awards: $1,000,000 per budget period.

Floor on Individual Award Amounts: none.

Average Projected Award Amount: $400,000–$800,000 per budget period.

Project Periods for Awards: This announcement is inviting applications for project periods up to three years. Awards, however, will be made on a competitive basis, for a one-year budget period. Applications for continuation grants funded under these awards beyond the one-year budget period but within the three-year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

III. Eligibility Information

1. Eligible Applicants

County governments, City or township governments, Special district governments, State controlled institutions of higher education, Native American tribal governments (Federally recognized), Non-profit organizations having a 501(c) (3) status with the Internal Revenue Code, other than institutions of higher education, Non-profit organizations that do not have 501 (c) (3) status with the Internal Revenue Code, other than institutions of higher education, Private institutions of higher education, For-profit organizations other than small businesses, Small businesses, and faith-based organizations.

Additional Information on Eligibility: Faith-based and community organizations are eligible to apply for these grants. ACF invites applications from a wide variety of organizations or entities with demonstrated knowledge and experience in the provision of the types of technical assistance described herein to a broad spectrum of faith-based and community organizations. We particularly encourage organizations and entities with demonstrated experience working with organizations representing a range of beliefs and practices or which can demonstrate the capacity to work with such diverse organizations.

Further, ACF encourages applications from applicants that propose to work with and have experience working with faith-based and community organizations that historically have not been well served or supported by governmental funds. If organizations propose to collaborate to provide Compassion Capital Fund intermediary services, they should have well-developed working relationships and a history of working together prior to announcement of this funding opportunity.

Any non-profit organization submitting an application must include proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing any one of the following:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.

(b) A copy of a currently valid IRS tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

(e) Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement singed by the parent organization that the applicant organization is a local non-profit affiliate.

Fiscal year (FY) 2002 ACF Compassion Capital Fund grantees who received (FY) 2003 continuation funds and (FY) 2003 ACF Compassion Capital Fund grantees are ineligible to apply. Additionally, Federal funds received as a result of this announcement cannot be paid as profit to grantees or sub-grantees, *i.e.*, any amount in excess of allowable direct and indirect costs of the recipient (45 CFR 74.81).

Applicants are cautioned that the ceiling for individual awards is $1,000,000.

Applications exceeding the $1,000,000 threshold will be considered non-responsive and will not be eligible for funding under this announcement.

Applications that fail to include the required amount of cost-sharing will be considered non-responsive and will not be eligible for funding under this announcement.

2. Cost Sharing or Matching

Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. For example, in order to meet the match requirements, a project with a total approved cost of $625,000, requesting $500,000 in ACF funds, must provide a non-Federal share of at least $125,000 (20% of total approved project cost of $625,000). Grantees will be held accountable for commitments of non-Federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal funds.

The basis for an applicant's meeting its cost sharing commitments must be firm, and cannot be speculative. Applications without a firm cost share commitment will not be evaluated. Cash commitments to meet the cost sharing requirement are preferable to in-kind commitments.

Applications that fail to include the required amount of cost-sharing will be considered non-responsive and will not be eligible for funding under this announcement.

3. Other (If Applicable)

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula,

entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Applicants are cautioned that the ceiling for individual awards is $1,000,000. Applications exceeding the $1,000,000 threshold will be considered non-responsive and will not be eligible for funding under this announcement.

Applications that fail to include the required amount of cost-sharing will be considered non-responsive and will not be eligible for funding under this announcement.

Applications that do not follow the required format described in section IV.2 Application Requirements will be considered non-responsive and will not be eligible for funding under this announcement.

IV. Application and Submission Information

1. Address To Request Application Package

U.S. Department of Health and Human Services (HHS),

Administration for Children and Families Office of Community Services Operations Center, Compassion Capital Fund Demonstration Program, 1815 North Fort Meyer Drive, Suite 300, Arlington, VA 22209, Attention: Eduardo Hernandez, Telephone: 1–800–281–9519,

E-mail: *OCS@LCGNET.COM.*

2. Content and Form of Application Submission

An original and two copies of the complete application are required. The original and 2 copies must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, have original signatures, and be submitted unbound. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget.

You may submit your application to us either in electronic or paper format. To submit an application electronically, please use the *http://www.Grants.gov* apply site. If you use Grants.Gov you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants. Gov.

- Electronic submission is voluntary.
- When you enter the Grants.Gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.Gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in paper format.
- You may submit all documents electronically, including all information typically included on the SF424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.Gov that contains a Grants.Gov tracking number. The Administration for Children and Families will retrieve your application from Grants.Gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *http://www.Grants.gov.* You must search for the downloadable application package by the CFDA number.

Application Requirements

The application must be double-spaced and single-sided on 8½ × 11 plain white paper, with 1'' margins on all sides. The application must use Times New Roman 12 point font or Arial 12 point font. All pages of the application (including appendices, resumes, charts, references/footnotes, tables, maps and exhibits) must be sequentially numbered. Applications that do not follow the aforementioned stated criteria will be considered non-responsive and will not be eligible for funding under this announcement.

Each application may include only one proposed project.

The Project Narrative including the Table of Contents must not exceed 25 pages. Pages submitted beyond the first 25 in the application project narrative section will be removed prior to panel review. The Narrative Budget Justification, Standard Forms for Assurances, Certifications, Disclosures and appendices and the cost-share letters are not included in this limitation, yet applicants are urged to be concise.

There is a 5-page limit to any additional supporting documentation, including letters of support. Applicants are requested not to send pamphlets, brochures, or other printed material along with their applications as these pose copying difficulties. These materials, if submitted, will not be included in the review process. In addition, applicants should not submit any additional letters of endorsement beyond any that may be required.

If the applicant is submitting letters documenting cost-share commitments from collaborating partners, state, or local governments or philanthropic organizations, the cost-share letters must clearly state that these organizations are committed to providing the funds to the organizations should the applicant be awarded a grant. Commitments in excess of the 20 percent threshold will not receive extra points, though applicants should note that applicants will be held accountable for all cost-share included. Failure to provide the full amount committed in the grant award may result in disallowance of Federal match.

Applicants must demonstrate proof of non-profit status and this proof must be included in their applications. Applicants must include any one of the following:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.

(b) A copy of a currently valid IRS tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

(e) Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement singed by the parent organization that the applicant organization is a local non-profit affiliate.

Forms and Certifications: The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under

Part V. In addition to the project description, the applicant needs to complete all the standard forms required for making applications for awards under this announcement. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, ''Assurances: Non-Construction Programs.'' Applicants must sign and return the Standard Form 424B with their applications. Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications. Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications. The forms (Forms 424, 424A-B; and Certifications may be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm* under new announcements. Fill out Standard Forms 424 and 424A and the associated certifications and assurances based on the instructions on the forms.

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants.'' The forms are located on the web at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

3. Submission Dates and Times

The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on May 18, 2004. Mailed or hand carried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address:

U.S. Department of Health and Human Services (HHS), Administration for Children and Families Office of Community Services Operations Center, Compassion Capital Fund Demonstration Program, 1815 North Fort Meyer Drive, Suite 300, Arlington, VA 22209, Attention: Barbara Ziegler Johnson, Telephone: 1–800–281–9519.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EST, at the following address:

U.S. Department of Health and Human Services (HHS), Administration for Children and Families Office of Community Services Operations Center, Compassion Capital Fund Demonstration Program, 1815 North Fort Meyer Drive, Suite 300, Arlington, VA 22209, Attention: Barbara Ziegler Johnson, Telephone: 1–800–281–9519.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

Required Forms:

What to submit	Required content	Required form or format	When to submit
Narrative	Described in Section v of this Announcement.	Format described in Section V	By application due date.
SF 424, SF 424A, and SF 424B.	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Certification regarding Lobbying and associated Disclosure of Lobbying Activities (SF LLL).	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Environmental Tobacco Smoke Certification.	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

Additional Forms: Private-non-profit organizations are encouraged to submit with their applications the additional survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants''.

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants.	Per required form	May be found on *http://www.acf.hhs.gov/programs/ofs/form.htm.*	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. As of October 1, 2003, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372:

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma,

Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, and Virginia. Applicants from these jurisdictions need not take action.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included with the application materials for this announcement.

5. Funding Restrictions

Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. The applicant must have a substantive role in the implementation of the project for which funding is requested. This prohibition does not bar the making of sub-grants or sub-contracting for specific services or activities needed to conduct the project.

Number of Projects in Application

Each application may include only one proposed project.

Applicants are cautioned that the ceiling for individual awards is $1,000,000. Applications exceeding the $1,000,000 threshold will be considered non-responsive and will not be eligible for funding under this announcement.

Applications that fail to include the required amount of cost-sharing will be considered non-responsive and will not be eligible for funding under this announcement.

Fiscal year (FY) 2002 ACF Compassion Capital Fund grantees who received FY 2003 continuation funds and (FY) 2003 ACF Compassion Capital Fund grantees are ineligible to apply and will not be funded under this announcement. Additionally, Federal funds received as a result of this announcement cannot be paid as profit to grantees or sub-grantees, *i.e.*, any amount in excess of allowable direct and indirect costs of the recipient (45 CFR 74.81).

In cases where more applications are approved for funding than ACF can fund with the money available, the Grants Officer shall fund applications in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved applications up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must then be placed in rank order along with other applications in the later competition.

6. Other Submission Requirements

Submission by Mail: An Applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The Application must be received at the address below by 4:30 PM Eastern Standard Time on or before the closing date. Applications should be mailed to: U.S. Department of Health and Human Services (HHS), Administration for Children and Families Office of Community Services Operations Center, Compassion Capital Fund Demonstration Program, 1815 North Fort Meyer Drive, Suite 300, Arlington, VA 22209, Attention: Barbara Ziegler Johnson, Telephone: 1–800–281–9519.

Hand Delivery: An Applicant must provide an original application with all attachments signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. Eastern Standard Time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m., Monday through Friday. Applications may be delivered to: U.S. Department of Health and Human Services (HHS), Administration for Children and Families Office of Community Services Operations Center 1815 North Fort Meyer Drive, Suite 300 Arlington, VA 22209, Attention: Barbara Ziegler Johnson, Telephone: 1–800–281–9519.

Electronic Submission: Please see section IV. 2 Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

V. Application Review Information

1. Criteria

General Instructions for the Uniform Project Description

The following are instructions and guidelines on how to prepare the ''project summary/abstract'' and ''Full Project Description'' sections of the application. Under the evaluation criteria section, note that each criterion is preceded by the generic evaluation requirement under the ACF Uniform Project Description (UPD). Public Reporting for this collection of information is estimated to average 25 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection information.

The project description is approved under OMB Control Number 0970–0139 which expires 3/31/2004.

An agency may nor 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.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement. Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments

cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated. Supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners, such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, describe how the intermediary's assistance to faith-based and community organizations will increase their effectiveness, enhance their ability to provide social services, diversify their funding sources, and create collaborations to better serve those most in need.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

Evaluation Criterion I: Approach (Maximum: 35 Points)

Factors: (1) Technical Assistance Strategy (15 points). Applications will be evaluated based on the extent to which the technical assistance strategy uses applicable methods and is logical, reasonable, well-conceived, and linked to the results and benefits expected. Applications will also be evaluated on the following factors: The extent to which the approach to reach out to faith-based and community organizations in the targeted geographic area is extensive; the extent to which the range and delivery approach of technical assistance to be provided serves to increase organizations' effectiveness, enhance their ability to provide social services, expand their organizations, diversify their funding sources, and create collaborations to better serve those most in need; and the extent to which the proposed schedule for accomplishing the activities planned is logical and attainable. Furthermore, applications will be evaluated on the extent to which the principles and conditions outlined in this Announcement regarding technical assistance are evident in the applicant's approach.

(2) Sub-award Strategy (15 points). Applications will be evaluated on the extent to which the sub-award strategy is logical, reasonable, and well-conceived. Applications will also be evaluated on the extent to which the plan is comprehensive, describes the process that the applicant will employ to identify and select organizations to receive sub-awards, and estimates the types and number of organizations expected to receive funding and the purposes to which sub-awards may be used. Furthermore, applications will also be evaluated on the extent to which the principles and conditions outlined in the Announcement regarding sub-awards are evident in the applicant's approach.

(3) Geographic Location (5 Points). Applications will be evaluated based on the extent to which they include a description of the precise region to be served, the rationale for proposing the region, and a detailed description of the population served by faith-based and community organizations in the proposed area, including statistics and facts that convey an understanding of the unique needs of the population in the area.

Evaluation Criterion II: Objectives and Need for Assistance (Maximum: 10 points)

Factors: (1) Needs of faith-based and community organizations to be served (5 points). Applications will be evaluated on the extent to which the objectives of the proposed project are clearly stated and shown to address the needs of the faith-based and community organizations to be served through training, technical assistance, and sub-awards.

(2) Needs of communities served (5 points). Applications will be evaluated on the extent to which the faith-based and community organizations that will receive training, technical assistance, and sub-awards serve vital needs in their communities.

Evaluation Criterion III: Organizational Profiles (Maximum: 25 points)

Factors: (1) Staff and Position Data (10 Points). Applications will be evaluated on the extent to which they include a listing of key positions required to carry out the project, the individuals proposed to fill the positions, and a detailed description of the kind of work they will perform. Applications will also be evaluated on the extent to which evidence is provided demonstrating the staff's skill, knowledge, and experience in carrying out their assigned activities such as evidence that demonstrates not only staff's good technical skills, but also a clear record of working with faith-based and community organizations. Applications will also be evaluated on the extent to which the above information is provided with regard to consultants or staff from other organizations proposed to work on the project.

(2) Past Experience (15 Points). Applications will be evaluated on the extent to which the applicant demonstrates experience and a proven track record in providing technical

assistance to faith-based and community organizations, including concrete examples of technical assistance the applicant has provided to these organizations, citing dates, names of groups assisted, and the kind of technical assistance provided.

Evaluation Criterion IV: Results or Benefits Expected (Maximum: 20 points)

Applications will be evaluated on the extent to which the specific goals of the project and the results and benefits proposed by the applicant are reasonable and likely, quantified, clearly linked to and supported by the proposed capacity-building technical assistance approach, and supportive of the stated goals under this announcement.

Evaluation Criterion V: Budget and Budget Justification (Maximum: 10 points)

Applications will be evaluated based on the extent to which they include a budget that is clear, easy to understand, and provides a detailed justification for the amount requested. Applicants should refer to the budget information presented in the Standard Forms 424 and 424A and to the budget justification instructions in section V. General Instructions for the Uniform Project Description. Given that non-Federal reviewers will be used in the review of applications, applicants may omit from the submitted copies of the application, (not from the original), the specific salary rates or amounts for individuals in the application budget and instead provide only summary information.

Applications will also be evaluated to the extent that they include the last two year's recent operating budgets of the applicant. Details of the budget are not required. The application will be evaluated based on the extent to which the amount requested under the funding announcement is proportional to the recent size of the applicant's operating budget. For example, it would be inappropriate for an organization that operated with $100,000 in 2002 and $110,000 in 2003 to request $1 million in Federal funds.

2. Review and Selection Process

Applications received by the due date will be reviewed and scored competitively. Experts in the field, generally persons from outside the Federal government, will use the evaluation criteria listed in Part V of this announcement to review and score the applications. The results of this review will be a primary factor in making funding decisions. ACF may also solicit comments from Regional Office staff and other Federal agencies. ACF may consider a variety of factors in addition to the review criteria identified above, including geographic diversity/coverage and types of applicant organizations, in order to ensure that the interests of the Federal Government are met in making the final selections. Furthermore, ACF may limit the number of awards made to the same or affiliated organizations although they would serve different geographic areas. In this way, ACF may increase opportunities for learning about different ways to provide technical assistance and support to faith-based and community organizations. Please note that applicants that do not comply with the requirements in the section titled ''Eligible Applicants'' will not be included in the review process.

Legal Rules That Apply to Faith-Based Organizations That Receive Government Funds

CCF monies shall not be used to support inherently religious practices such as religious instruction, worship, or proselytization. Grant or sub-award recipients, therefore, may not and will not be selected based on religious criteria. Neutral, non-religious criteria that neither favor nor disfavor religion must be employed in selection of a grantee and sub-award recipients under this announcement.

Approved but Unfunded Applications: In cases where more applications are approved for funding than ACF can fund with the money available, the Grants Officer shall fund applications in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved applications up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must then be placed in rank order along with other applications in the later competition.

VI. Award Administration Information

1. Award Notices

The successful applicants will be notified through the issuance of a Financial Assistance Award document which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail.

Organizations whose applications will not be funded will be notified in writing by the Office of Community Services.

2. Administrative and National Policy Requirements

45 CFR part 74 and 45 CFR part 92.

Conditions for the Cooperative Agreement

Organizations selected to receive an award will be responsible for implementing activities described in the project description of the approved application; developing and implementing work plans that will ensure that the services and activities included in the approved application address the needs of faith-based and community organizations in an efficient, effective, and timely manner; submitting for Federal review and approval, within 60 days of receipt of the Financial Assistance Award and prior to the issuance of any such sub-awards, plans and procedures for the issuance of sub-awards; submitting regular semi-annual financial status and progress reports that describe project activities; working cooperatively and collaboratively with ACF officials, other Federal agency officials conducting related activities, the other intermediary organizations approved under the CCF program, and other entities or organizations contracted by ACF to assist in carrying out the purposes of the Compassion Capital Fund program; ensuring that key staff attend and participate in ACF sponsored workshops and meetings, including the initial orientation meeting; and ensuring that Compassion Capital Funds are not used to support religious practices such as religious instruction, worship, or prayer.

3. Reporting

Programmatic Reports: Semi-annually.

Financial Reports: Semi-annually.

Special Reporting Requirements: None.

All grantees are required to submit semi-annual program reports; grantees are also required to submit semi-annual expenditure reports using the required financial standard form (SF–269) which is located on the Internet at: *http://forms.psc.gov/forms/sf/SF–269.pdf.* A suggested format for the program report will be sent to all grantees after the awards are made.

VII. Agency Contacts

Program Office Contact: Kelly Cowles, Office of Community Services, 370 L'Enfant Promenade, SW., Suite 500

West, Aerospace Building, Washington, DC 20447–0002, E-mail: *OCS@LCGNET.COM,* Telephone: (800) 281–9519.

Grants Management Office Contact: Barbara Ziegler, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 4th Floor West, Aerospace Building, Washington, DC 20447–0002, E-mail: *OCS@LCGNET.COM,* Telephone: (800) 281–9519.

General: Office of Community Services Operations Center, Compassion Capital Fund Demonstration Program, 1815 North Fort Meyer Drive, Suite 300, Arlington, VA 22209, Attention: Eduardo Hernandez, Telephone: 1–800–281–9519, E-mail: *OCS@LCGNET.COM.*

VIII. Other Information

Additional information about this program and its purpose can be located on the following Web sites: *http://www.acf.hhs.gov/programs/ccf/, http://www.acf.hhs.gov/programs/ocs/, http://www.acf.hhs.gov/programs/ccf.*

Dated: March 15, 2004.

Clarence Carter,

Director, Office of Community Services.

[FR Doc. 04–6204 Filed 3–18–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003E–0458]

Determination of Regulatory Review Period for Purposes of Patent Extension; VELCADE

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for VELCADE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions 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* .

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product VELCADE bortezomib). VELCADE for Injection is indicated for the treatment of multiple myeloma patients who have received at least two prior therapies and have demonstrated disease progression on the last therapy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for VELCADE (U.S. Patent No. 5,780,454) from Millenium Pharmaceuticals, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated November 18, 2003, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of VELCADE represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for VELCADE is 1,723 days. Of this time, 1,610 days occurred during the testing phase of the regulatory review period, while 113 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: August 26, 1998. The applicant claims August 22, 1998, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was August 26, 1998, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: January 21, 2003. FDA has verified the applicant's claim that the new drug application (NDA) for VELCADE (NDA 21–602) was initially submitted on January 21, 2003.

3. *The date the application was approved*: May 13, 2003. FDA has verified the applicant's claim that NDA 21–602 was approved on May 13, 2003.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 920 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by May 18, 2004. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 15, 2004. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in

brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 17, 2004.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 04–6159 Filed 3–18–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration of Children and Families

Office of Refugee Resettlement

Proposed Notice of Allocations to States of FY 2004 Funds for Refugee Social Services

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Proposed notice of allocations to States of FY 2004 funds for refugee social services.

[CFDA No.: 93.566, Refugee Assistance—State Administered Programs]

SUMMARY: This notice establishes the proposed allocations to States of FY 2004 funds for refugee [1] social services under the Refugee Resettlement Program (RRP). In the final notice, amounts may be adjusted based upon final adjustments to FY 2002 and FY 2003 data in some States.

DATES: Comments on this Notice must be received by April 19, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Do, Division of Budget, Policy, and Data Analysis (BPDA), telephone: (202) 401–4579, e-mail: *kdo@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION:

[1] Eligibility for refugee social services include refugees, asylees, Cuban and Haitian entrants, certain Amerasians from Viet Nam who are admitted to the U.S. as immigrants, certain Amerasians from Viet Nam who are U.S. citizens, and victims of a severe form of trafficking who receive certification or eligibility letters from ORR. *See* 45 CFR 400.43 and ORR State Letter #01–13 on the Trafficking Victims Protection Act, dated May 3, 2001, as modified by ORR State Letter # 02–01, January 4, 2002.

Due to recent legislative changes, certain family members who are accompanying or following to join victims of severe forms of trafficking also are eligible for ORR-funded benefits and services. These individuals have been granted nonimmigrant visas under 8 U.S.C. 1101(a)(15)(T)(ii).

The term ''refugee,'' used in this notice for convenience, is intended to encompass such additional persons who are eligible to participate in refugee program services.

I. Amounts for Allocation

The Office of Refugee Resettlement (ORR) has available $152,217,586 in FY 2004 refugee social service funds. *See* Consolidated Appropriations Act, 2004, Pub. L. 108–199. This amount reflects a recission of 0.59 percent applied across the board to all line items.

The FY 2004 Conference Report (H.R. Rept. No. 108–401) reads as follows with respect to social service funds:

> The conference agreement appropriates $450,276,000 rather than the $461,853,000 as proposed by H.R. 2660 and $428,056,000 as proposed by the Senate. Within this amount, $153,121,000 is provided for social services as proposed in H.R. 2660. The Senate bill included $140,000,000 for this purpose.
>
> The agreement also includes $19,000,000 for increased support to communities with large concentrations of Cuban and Haitian refugees of varying ages whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance for healthcare and education.
>
> The conferees recognize the importance of continued educational support to schools with a significant proportion of refugee children, consistent with previous support to schools heavily impacted by large concentrations of refugees, and urge the Office of Refugee Resettlement to support these efforts should funding become available in the social services or other programs.

ORR intends to use the $ 152,217,586 appropriated for FY 2004 social services as follows:

- Approximately $79,000,000 will be allocated under the 3-year population formula, as set forth in this notice for the purpose of providing employment services and other needed services to refugees.
- Approximately $14,000,000 is expected to be awarded as new and continuation social service discretionary grants under new and prior year competitive grant announcements issued separately from this proposed notice.
- Approximately $19,000,000 is expected to be awarded to serve communities most heavily affected by recent Cuban and Haitian entrant and refugee arrivals. These funds will be awarded under a prior year separate announcement.
- Approximately $28,000,000 is expected to be awarded through discretionary grants for continuation of awards made in prior years.
- Up to $15,000,000 will be utilized to continue the awards for educational support to schools with a significant proportion of refugee children, consistent with previous support to schools heavily impacted by large concentrations of refugees. Of this amount, up to $6,500,000 in prior year funds may be used to augment the current budget authority of $8,500,000.
- Approximately $2,000,000 is expected to be awarded through contracts for an evaluation of the effectiveness of ORR's employment programs.

Refugee Social Service Funds

The FY 2004 population figures that have been used for this proposed formula social services allocation include refugees, Amerasians from Viet Nam, Cuban/Haitian entrants, Havana parolees, and victims of severe forms of trafficking. These population figures will be adjusted in the final allocation to reflect more accurate information on arrivals in 2003, secondary migration (including that of victims of severe forms of trafficking) and asylee data submitted by States. (See Section IV. Basis of Population Estimates).

The Director proposes allocating $79,728,843 to States on the basis of each State's proportion of the national population of refugees who have been in the U.S. three years or less as of October 1, 2003 (including a floor amount for States that have small refugee populations). Of the amount proposed to be awarded, approximately $6 million is expected to be awarded to Wilson/Fish Alternative Projects providing social services.

The use of the 3-year population base in the allocation formula is required by section 412(c)(1)(B) of the Immigration and Nationality Act (INA) which states that ''funds available for a fiscal year for grants and contracts [for social services] * * * shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year.''

As established in the FY 1992 social services notice published in the **Federal Register** on August 29, 1991, section I, ''Allocation Amounts'' (56 FR 42745), a variable floor amount for States which have small refugee populations is calculated as follows: If the application of the regular allocation formula yields less than $100,000, then —

(1) a base amount of $75,000 is provided for a State with a population of 50 or fewer refugees who have been in the U.S. 3 years or less; and

(2) for a State with more than 50 refugees who have been in the U.S. 3 years or less: (a) a floor has been calculated consisting of $50,000 plus

the regular per capita allocation for refugees above 50 up to a total of $100,000 (in other words, the maximum under the floor formula is $100,000); (b) if this calculation has yielded less than $75,000, a base amount of $75,000 is provided for the State.

Population To Be Served and Allowable Services

Eligibility for refugee social services includes persons who meet all requirements of 45 CFR 400.43 (*see* Footnote 1 on page 1 for service populations). In addition, persons granted asylum are eligible for refugee benefits and services from the date that asylum was granted (*See* ORR State Letter No. 00–12, effective June 15, 2000). Victims of a severe form of trafficking who have received a certification or eligibility letter from ORR are eligible from the date on the certification letter (*See* ORR State Letter No. 01–13, May 3, 2001, as modified by ORR State Letter No. 02–01, January 4, 2002). Certain family members who are accompanying or following to join victims of severe forms of trafficking also are eligible for ORR-funded benefits and services. *See* 22 U.S.C. 7105(b)(1)(A), as amended by section 4(a)(2)(A) of the ''Trafficking Victims Protection Reauthorization Act of 2003,'' Pub. L. 108–193. These individuals have been granted nonimmigrant visas under 8 U.S.C. 1101(a)(15)(T)(ii). This visa can be granted to the spouse, children and parents of a victim of a severe form of trafficking who is under 21 years of age or to the spouse and children of a victim of a severe form of trafficking who is 21 or older.

Services to refugees must be provided in accordance with the rules of 45 CFR part 400 subpart I—Refugee Social Services. Although the allocation formula is based on the 3-year refugee population, States may provide services to refugees who have been in the country up to 60 months (5 years), with the exception of referral and interpreter services and citizenship and naturalization preparation services for which there is no time limitation (45 CFR 400 152(b)).

Under waiver authority at 45 CFR 400.300, the Director of ORR may issue a waiver of the limitation on eligibility for social services contained in 45 CFR 400.152(b). There is no blanket waiver of this provision in effect for FY 2004. States may apply for a waiver of 45 CFR 400.152(b) in writing to the Director of ORR. Each waiver request will be reviewed based on supporting data and information provided. The Director of ORR will approve or disapprove each waiver request as expeditiously as possible.

A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program or indicate in its refugee program State plan that Cuban/Haitian entrants will be served in order to use funds on behalf of entrants as well as refugees.

Allowable social services are those indicated in 45 CFR 400.154 and 400.155. Additional services not included in these sections that the State may wish to provide must be submitted to and approved by the Director of ORR as required under 45 CFR 400.155(h).

Service Priorities

In accordance with 45 CFR 400.147, States are required to provide social services to refugees in the following order of priority, except in certain individual extreme circumstances: (a) All newly arriving refugees during their first year in the U.S. who apply for services; (b) refugees who are receiving cash assistance; (c) unemployed refugees who are not receiving cash assistance; and (d) employed refugees in need of services to retain employment or to attain economic independence. In order for refugees to leave Temporary Assistance for Needy Families (TANF) quickly, States should, to the extent possible, ensure that all newly arriving refugees receive refugee-specific services designed to address the employment barriers that refugees typically face.

ORR encourages States to re-examine the range of services they currently offer to refugees. Those States that have had success in helping refugees achieve early employment may find it to be a good time to expand beyond the provision of basic employment services and address the broader needs that refugees have in order to enhance their ability to maintain financial security and to successfully integrate into the community. Other States may need to reassess the delivery of employment services in light of local economic conditions and develop new strategies to better serve the newly arriving refugee groups.

States should also be aware that ORR will make social services formula funds available to pay for social services that are provided to refugees who participate in Wilson/Fish projects which can be administered by public or private non-profit agencies, including refugee, faith-based and community organizations. Section 412(e)(7)(A) of the INA provides that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate standing notice in the **Federal Register** with respect to applications for such projects (64 FR 19793 (April 22, 1999)).

States are encouraged to consider eligible sub-recipients for formula social service funds, including public or private non-profit agencies such as, refugee, faith-based, and community organizations.

II. (Reserved for Discussion in the Final Notice of Submitted Comments)

III. Allocation Formulas

Of the funds available for FY 2004 for social services, $79,728,843 is proposed to be allocated to States in accordance with the formula specified in A. below.

A. A State's allowable formula allocation is calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—
2. The total number of refugees, Cuban/Haitian entrants, parolees, and Amerasians from Viet Nam, as shown by the ORR Refugee Arrivals Data System (RADS) for FY 2001–2002, Refugee Processing Center (RPC) data for FY 2003, and victims of severe forms of trafficking as shown by the certification and eligibility letters issued by ORR, who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated. This total will also include the total number of asylees who have been served by a State through its refugee resettlement or social services system in FYs 2001, 2002, and 2003. The resulting per capita amount is multiplied by—
3. The number of persons in item 2, above, in the State as of October 1, 2003, adjusted for estimated secondary migration.

The calculation above yields the formula allocation for each State. Minimum allocations for small States are taken into account.

IV. Basis of Population Estimates

The population estimates for the proposed allocation of funds in FY 2004

for the formula social service allocation are based on data on refugee arrivals from the ORR Refugee Arrivals Data System, adjusted as of September 30, 2003, for estimated secondary migration. The database includes refugees of all nationalities, Amerasians from Viet Nam, and Cuban and Haitian entrants. Data on trafficking victims are taken from the total number of trafficking victims' certification and eligibility letters issued by ORR.

For Fiscal Year 2004, ORR's proposed formula social service allocations for the States are based on the numbers of refugees, Amerasians, victims of a severe form of trafficking, entrants and Havana parolees. Refugee numbers are based upon the arrivals during the preceding fiscal years: 2001, 2002, and 2003. After consultation with the Refugee Processing Center (RPC), Department of State (DOS), ORR has decided to use the ORR-Refugee Arrivals Data System (ORR–RADS) database of arrival numbers for FYs 2001, 2002, and the RPC data for FY 2003 as the basis for the final FY 2004 social services allocations.

The proposed FY 2004 social services allocations may reflect adjustments in FY 2003 arrivals, secondary migration, victims of severe forms of trafficking, and asylees who have been served by the States in FYs 2001, 2002, and 2003 through its refugee resettlement program or social service system.

The data on secondary migration are based on data submitted by all participating States on Form ORR–11 on secondary migrants who have resided in the U.S. for 36 months or less, as of September 30, 2003. The total migration reported by each State was due to ORR on January 5, 2004. The total migration is summed by ORR, yielding in- and out-migration figures and a net migration figure for each State. The net migration figure is applied to the State's total arrival figure, resulting in a revised ORR population estimate.

ORR calculations are developed separately for refugees and entrants and then combined into a total final 3-year refugee/entrant population for each State. Eligible Amerasians are included in the refugee figures. Havana parolees (HP's) are enumerated in a separate column in Table 1, below, because they are tabulated separately from other entrants. Havana parolee arrivals for all States are based on actual data.

Table 1 (attached) shows the proposed 3-year populations, as of October 1, 2003, of refugees (col. 1), entrants (col. 2), Havana parolees (col. 3), victims of trafficking (col. 4), total population, (col. 5), the proposed formula amounts which the population yield (col. 6), and the proposed allocation by States (col. 7).

If a State does not agree with ORR's population estimate and wishes ORR to reconsider its numbers, it should submit written evidence to ORR, including a list of refugees identified by name, alien number, date of birth, and date of arrival. Listings of refugees who are not identified by their alien number will not be considered. Such evidence should be submitted separately from comments on the proposed allocation formula no later than 30 days from the date of publication of this Notice and should be sent via overnight mail to : Loren Bussert, Division of Budget, Policy and Data Analysis, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone: (202) 401–4732, or as an Excel spreadsheet or other compatible spreadsheet format as an email attachment to: *lbussert@acf.hhs.gov*

States which have served asylees during the past three years also may submit the following information in order to have their population estimate adjusted to include those asylees whose asylum was granted within the 36 month period ending September 30, 2003: (1) Alien number; (2) date of birth; and, (3) the date asylum was granted. States may submit data on persons who received asylum in their State as well as data on persons who received asylum elsewhere and who have migrated into their State. It is recommended that States not use Form ORR–11 to report the secondary migration of asylees.

ORR will credit States that have served victims of a severe form of trafficking during the past year with additional numbers as verified with ORR certification letters issued. A State which has served a victim of a severe form of trafficking who the State believes was residing in a different State at the time that the ORR certification/eligibility letter was issued, should submit the following information in order to have their population estimate adjusted to include these trafficking victims: (1) Alien number, if available; (2) date of birth; (3) certification letter number and, (4) date on the certification letter.

Please submit the above data on asylees and trafficking victims served on *separate* Excel spreadsheets as an email attachment within 30 days of the publication date of this announcement to: *lbussert@acf.hhs.gov*

V. Proposed Allocation Amounts

Funding subsequent to the publication of this notice will be contingent upon the submission and approval of a State annual services plan that is developed on the basis of a local consultative process, as required by 45 CFR 400.11(b)(2) in the ORR regulations.

Table 1, attached, represents the proposed allocation for refugee social services in FY 2004.

VI. Paperwork Reduction Act

This notice does not create any reporting or record keeping requirements requiring OMB clearance.

Dated: March 10, 2004.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

TABLE 1.—ESTIMATED THREE-YEAR REFUGEE/ENTRANT/PAROLEE/TRAFFICKING VICTIM POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE RESETTLEMENT PROGRAM AND ESTIMATED SOCIAL SERVICE FORMULA ALLOCATIONS FOR FY 2004 (ADJUSTED FOR SECONDARY MIGRATION BASED ON THE ORR–11)

[Proposed FY 2004 Social Services Formula Notice]

State	Refugees[1]	Entrants	Havana parolees[2]	trafficking victims[3]	Total population	Proposed formula amount	Proposed allocation
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Alabama[4]	145	0	18	.....	163	$75,750	$100,000
Alaska[4]	211	0	0	7	218	101,310	101,310
Arizona	3,659	351	7	.....	4,017	1,866,805	1,866,805
Arkansas	5	1	0	.....	6	2,788	75,000
California[4]	19,096	50	69	81	19,296	8,967,358	8,967,356
Colorado[4]	1,916	4	9	5	1,934	898,780	898,780

TABLE 1.—ESTIMATED THREE-YEAR REFUGEE/ENTRANT/PAROLEE/TRAFFICKING VICTIM POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE RESETTLEMENT PROGRAM AND ESTIMATED SOCIAL SERVICE FORMULA ALLOCATIONS FOR FY 2004 (ADJUSTED FOR SECONDARY MIGRATION BASED ON THE ORR–11)—Continued

[Proposed FY 2004 Social Services Formula Notice]

State	Refugees[1]	Entrants	Havana parolees[2]	trafficking victims[3]	Total population	Proposed formula amount	Proposed allocation
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Connecticut	2,215	20	19	.....	2,254	1,047,493	1,047,493
Delaware	135	8	0	.....	143	66,456	93,220
Dist. of Columbia	447	3	1	1	452	210,056	210,056
Florida	7,337	15,311	23,510	30	46,188	21,464,772	21,464,772
Georgia	4,802	19	97	4	4,922	2,287,382	2,287,382
Hawaii	(11)	0	0	49	38	17,660	75,000
Idaho[4]	1,016	3	0	1	1,020	474,021	474,021
Illinois	3,918	16	69	6	4,009	1,863,087	1,863,087
Indiana	843	4	9	.....	856	397,806	397,806
Iowa	1,898	0	0	.....	1,898	882,050	882,050
Kansas	332	3	10	1	346	160,795	160,795
Kentucky[4]	1,644	924	11	1	2,580	1,198,994	1,198,994
Louisiana	347	89	23	.....	459	213,309	213,309
Maine	844	0	1	.....	845	392,694	392,694
Maryland	1,987	6	19	9	2,021	939,212	939,212
Massachusetts[4]	3,257	149	10	3	3,419	1,588,899	1,588,899
Michigan	3,348	541	36	5	3,930	1,826,374	1,826,374
Minnesota	6,821	5	4	4	6,834	3,175,939	3,175,939
Mississippi	112	4	4	2	122	56,697	83,460
Missouri	3,703	24	10	1	3,738	1,737,146	1,737,146
Montana	36	0	2	.....	38	17,660	75,000
Nebraska	972	2	0	.....	974	452,643	452,643
Nevada[4]	723	538	35	4	1,300	604,144	604,144
New Hampshire	963	0	1	2	966	448,925	448,925
New Jersey	1,620	290	312	7	2,229	1,035,875	1,035,875
New Mexico	214	261	0	.....	475	220,745	220,745
New York	10,292	1,012	107	25	11,436	5,314,609	5,314,609
North Carolina	3,039	16	46	2	3,103	1,442,045	1,442,045
North Dakota[4]	470	0	0	.....	470	218,421	218,421
Ohio	2,307	3	5	2	2,317	1,076,771	1,076,771
Oklahoma	215	0	1	52	268	124,547	124,547
Oregon	2,630	306	1	.....	2,937	1,364,901	1,364,901
Pennsylvania	4,952	355	28	26	5,361	2,491,397	2,491,397
Rhode Island	470	5	1	.....	476	221,210	221,210
South Carolina	238	0	13	.....	251	116,646	116,646
South Dakota[4]	940	0	0	.....	940	436,843	436,843
Tennessee	1,467	6	36	.....	1,509	701,272	701,272
Texas	5,757	902	87	91	6,837	3,177,333	3,177,333
Utah	1,573	5	0	.....	1,578	733,338	733,338
Vermont	418	0	0	.....	418	194,256	194,256
Virginia	3,105	172	38	15	3,330	1,547,538	1,547,538
Washington	10,844	0	3	11	10,858	5,045,997	5,045,997
West Virginia	6	0	0	.....	6	2,788	75,000
Wisconsin	1,042	4	5	.....	1,051	488,427	488,427
Wyoming[5]	.....	.....	.....	.....	.....	.....	.....
Total	124,320	21,412	24,657	447	170,836	79,391,964	79,728,843

[1] Includes Amerasian immigrants.
[2] For all years, Havana Parolee arrivals for all States are based on actual data.
[3] Includes all victims of a severe form of trafficking since program inception in March, 2001.
[4] The allocations for Alaska, Colorado, Idaho, Kentucky, Massachusetts, Nevada, North Dakota, South Dakota, Alabama, and for San Diego County, California are expected to be awarded to Wilson/Fish projects.
[5] Wyoming no longer participates in the Refugee Resettlement Program.

[FR Doc. 04–6203 Filed 3–18–04; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–15797]

Final Environmental Impact Statement for the Proposed Lake Washington Ship Canal Bridge and Proposed Modification of the Duwamish Waterway Bridge

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability; request for public comments.

SUMMARY: The Coast Guard announces the availability of a Final Environmental Impact Statement (EIS) for the Seattle Monorail Project ''Green Line'' in Seattle, Washington. The Coast Guard and the Seattle Monorail Project undertook the preparation of this Final EIS to satisfy the requirements of both the National Environmental Policy Act and the Washington State Environmental Policy Act for the proposed Green Line monorail project.

DATES: Comments and related material must reach the Docket Management Facility on or before April 19, 2004.

ADDRESSES: You may submit comments identified by Coast Guard docket number (USCG–2003–15797) to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, (USCG–2003–15797), U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) Delivery: 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, as well as the Final EIS, 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, including the EIS, on the Internet at *http://dms.dot.gov*. Copies of the Final EIS are also available for inspection at the offices of the Seattle Monorail Project, 1904 Third Avenue, Suite 105, Seattle, WA 98191 (telephone (206) 328–1220), and are available at the City of Seattle public libraries, and at the U.S. Coast Guard Bridge Section, Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Room 3510, Seattle, WA 98174–1067.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, the proposed project, or the associated EIS, call Mr. Austin Pratt, Coast Guard, telephone (206) 220–7282. You may also request information from Helene Kornblatt, Seattle Monorail Project, telephone (206) 587–1743. If you have questions about viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Request for Comments

We welcome comments on this Final EIS. With your comment, please include your name and address, identify the docket number for this notice (USCG–2003–15797), and give the reasons for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Proposed Action

The Seattle Popular Monorail Authority (SPMA) proposes to build a 14-mile monorail (the Green Line) in Seattle, Washington to provide transit service to a number of Seattle communities and destinations. The SPMA proposed the Green Line in accordance with the Seattle Citizens' Petition No. 1, which was passed by Seattle voters in November 2002. In Petition No. 1, voters adopted the Seattle Popular Monorail Plan, created the SPMA, required the SPMA to adopt and implement the Seattle Popular Monorail Plan, and authorized funding for the construction and operation of the Green Line as described in the Plan.

The proposed Green Line would run from the Ballard neighborhood of Seattle, through the Interbay and Ballard industrial areas, through downtown Seattle, through the South Downtown (SODO) industrial area, and then to the West Seattle neighborhood. The Green Line would connect the urban neighborhoods in Ballard and West Seattle with the industrial/manufacturing areas in the Interbay and SODO areas and with the downtown urban core and central business district of the City of Seattle.

The Green Line would use traditional monorail technology. The automated electric train would consist of several linked train cars running on rubber tires locked into an elevated guideway. The Green Line would include a new bridge, crossing the Lake Washington Ship Canal (near the existing Ballard Bridge), which would require both a bridge permit from the Coast Guard and an environmental review pursuant to the National Environmental Policy Act (NEPA). The Green Line would also cross the Duwamish Waterway on the existing West Seattle High-Rise Bridge. This second crossing may also require a bridge permit from the Coast Guard, depending on final design drawings. In order to evaluate the indirect and cumulative environmental impacts of the Coast Guard's bridge permit actions, the Coast Guard and the SPMA included the entire 14-mile Green Line proposal in the Final EIS.

Final Environmental Impact Statement

The Coast Guard and the Seattle Monorail Project undertook the preparation of this Final EIS to satisfy the requirements of both the NEPA and the Washington State Environmental Policy Act for the proposed Green Line monorail project. The analysis for this EIS is divided into six geographical segments: Ballard, Interbay/Magnolia, Queen Anne/Seattle Center/Belltown, Downtown/Pioneer Square, SODO/Chinatown International District/Pioneer Square, and West Seattle. Each segment is then divided into multiple alignments, to include a preferred alignment. The Final EIS examines in detail the alternative and preferred alignments for each segment and a no action alternative. Evaluation of the no action alternative, defined as the transportation system and environment as they would exist without the Green Line, provides a baseline for comparing the impacts associated with the proposed action.

Dated: March 9, 2004.

N.E. Mpras,

Chief, Office of Bridge Administration, U.S. Coast Guard.

[FR Doc. 04–5916 Filed 3–18–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Departmental Advisory Committee on Commercial Operations of the Bureau of Customs and Border Protection (COAC); Notice of Meeting

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date, time, and location for the second meeting of the ninth term of the Departmental Advisory Committee on Commercial Operations of the Bureau of Customs and Border Protection (COAC), and the expected agenda for its consideration.

DATES: The next meeting of the COAC will be held on Friday, April 2, 2004,9:30 a.m. to 1 p.m.

ADDRESSES: The meeting of the Departmental Advisory Committee on Commercial Operations of the Bureau of Customs and Border Protection (COAC) will be held in the Ronald Reagan Building, Horizon Room, located at 1300 Pennsylvania, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Vetta Jeffries, 202–282–8468.

SUPPLEMENTARY INFORMATION: This meeting is open to the public; however, participation in COAC deliberations is limited to COAC members, Homeland Security and Treasury Department officials, and persons invited to attend the meeting for special presentations. Since seating is limited, all persons attending this meeting should provide notice and obtain clearance from Vetta Jeffries, 202–282–8468, no later than 2 p.m. e.s.t. on Wednesday, March 31, 2004.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Vetta Jeffries at 202–282–8468 as soon as possible.

Draft Agenda

The COAC is expected to pursue the following agenda, which may be modified prior to the meeting:

1. Update on Agriculture Subcommittee Activities
2. Update on International Trade Data System (ITDS)
3. Update on Security Subcommittee Activities (Advance Cargo Information, Customs—Trade Partnership against Terrorism (C–TPAT), Vehicle and Cargo Inspection System (VACIS)
4. DHS Reorganization (status, COAC opportunity to respond)
5. MTSA Implementation Subcommittee
6. Update on Focused Assessment Program/Importer Self Assessment.

C. Stewart Verdery,

Assistant Secretary for Border and Transportation Security Policy and Planning.

[FR Doc. 04–6172 Filed 3–18–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1509–DR]

South Carolina; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Carolina (FEMA–1509–DR), datedFebruary 13, 2004, and related determinations.

EFFECTIVE DATE: March 10, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of South Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 13, 2004:

Cherokee, Chester, Darlington, Dillon, Fairfield, Lee, Oconee, Saluda, and Union Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–6181 Filed 3–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4910–N–06]

Notice of Proposed Information Collection for Public Comment; Public Housing Agency (PHA) Development Cost Budget/Cost Statement, Actual Development Cost Certificate, Acquisition and Relocation Report

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* May 18, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Sherry F. McCown, Acting Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Sherry F. McCown, (202) 708–0614, extension 7651. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will request an extension of and submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Agency (PHA) Development Cost Budget/Cost Statement, Actual Development Cost Certificate, Acquisition and Relocation Report.

OMB Control Number: 2577–0036.

Description of the need for the information and proposed use: HUD needs the information on the Cost Budget/Statement to determine whether PHA expenditures or requests for funds are reasonable in relation to the stage of development so that, if they are not, appropriate action can be taken to prevent budget overruns or excessive financing. PHAs submit the Actual Development Cost Certificate to notify HUD that all development work has been completed, and to report the amount for all costs relating to development. Acquisition and relocation reports enable HUD to determine PHA compliance with acquisition and relocation requirements pursuant to the Uniform Relocation Assistance and Real Property acquisition Policies Act of 1970.

Agency form numbers, if applicable: HUD–52427, HUD–52484.

Members of affected public: State, Local or Tribal Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 620 respondents, annually, semi-annually, and quarterly, five average hours per response, 8,864 hours for a total reporting burden.

Status of the proposed information collection: Extension.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 12, 2004.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 04–6161 Filed 3–18–04; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4910–N–07]

Notice of Proposed Information Collection for Public Comment; Insurance Information

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* May 18, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Sherry F. McCown, Acting Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Sherry F. McCown, (202) 708–0614, extension 7651. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will request an extension of and submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Agency (PHA) Insurance Information.

OMB Control Number: 2577–0045.

Description of the need for the information and proposed use: The Annual Contributions Contract between HUD and PHAs require PHAs to insure their property for an amount sufficient to protect against financial loss. When new projects are considered, form HUD–5460 is used to establish an insurable value at the time the project is built. Insurance amounts can be adjusted yearly as inflation and increased costs of construction create an upward trent on insurable values.

Agency form numbers, if applicable: HUD–5460.

Members of affected public: State, Local or Tribal Governments.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 60 respondents, reporting, one hour average per response, 60 hours for a total reporting burden.

Status of the proposed information collection: Extension.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 12, 2004.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 04–6162 Filed 3–18–04; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–13]

Notice of Submission of Proposed Information Collection to OMB: Capital Advance Section 811 Grant Application for Supportive Housing for Persons With Disabilities

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork

Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for approval to collect information necessary to select applicants for Section 811 Grants for Supportive Housing for Persons with Disabilities.

DATES: *Comments Due Date:* April 19, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0462) should be sent to: HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Melanie_Kadlic@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web page at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the contact information of an agency official familiar with the proposal and the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Capital Advance Section 811 Grant Application for Supportive Housing for Persons with Disabilities.

OMB Approval Number: 2502–0462.

Form Numbers: HUD–92016–CA, HUD–92041, HUD–92042, HUD–92043, plus standard grant forms: SF–424, SF–424–Supplemental, HUD–424–B, SF LLL, HUD–2880, HUD–2991, HUD–2990, HUD–96010.

Description of the Need for the Information and its Proposed Use: This is a request for approval to collect information necessary to select applicants for Section 811 Grants for Supportive Housing for Persons with Disabilities.

Respondents: Not-for-profit institutions.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	260	260		35.72		9,339

Total Estimated Burden Hours: 2,710.

Status: Reinstatement, with change, of previously approved collection for which approval has expired.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 15, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–6163 Filed 3–18–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4901–N–12]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: March 19, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Burruss, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 11, 2004.

Mark R. Johnston,

Acting Director, Office of Special Needs Assistance Programs.

[FR Doc. 04–5888 Filed 3–18–04; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4922–N–02]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of a Computer Matching Program—HUD and the Internal Revenue Service (IRS).

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818; June 19, 1989), and OMB Bulletin 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management and Budget

(OMB), Congress and the Public,'' the Department of Housing and Urban Development (HUD) is issuing a public notice of its intent to conduct a computer matching program with the Internal Revenue Service (IRS). This notice supersedes a similar notice published in the **Federal Register** on June 21, 2001 (66 FR 33265). Under the terms of the agreement IRS agrees to disclose to HUD taxpayer mailing addresses as authorized by the Commissioner or her delegate pursuant to Section 6103(m)(2) of the Internal Revenue Code (IRC) for use in locating individuals to collect or compromise federal claims in accordance with 31 United States Code (U.S.C.) 3711, 3717 and 3718. This program is called the Taxpayer Address Request Program (TAR). It was established by the IRS to facilitate the retrieval of taxpayer mailing addresses from the individual Master File on a volume basis. The volume of addresses and the method in which the IRS maintains the information make computer matching the most feasible method of extracting the data for disclosure to other agencies. Using the TAR computer matching program, current addresses can be obtained from the IRS within a one-week period, thereby avoiding the expenditure of substantial federal resources in the manual execution of a matching process or investigations by a large workforce to ascertain the current address of individuals against whom the agency has a claim or indebtedness.

DATES: *Effective Date:* Computer matching is expected to begin on April 19, 2004 unless comments are received which will result in a contrary determination, or 40 days from the date a computer matching agreement is signed, whichever is later.

Comments Due Date: April 19, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

For Privacy Act Information and for Further Information from Recipient Agency Contact: Jeanette Smith, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone number (202) 708–2374 or FAX (202) 708–3135. (These are not toll-free numbers.)

For Further Information from Source Agency Contact: M.R. Taylor, Internal Revenue Service, Office of Governmental Liaison, CL: GLD: GL Room 16111R, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone number (202) 622–5145 or Fax (202) 622–3041. (These are not toll-free numbers.)

Reporting: In accordance with Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, and Office of Management and Budget (OMB), Bulletin 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public;'' copies of this notice and report are being provided to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget.

Authority: The matching program will be conducted under the authority of Section 6103 (m)(2) of the Internal Revenue Code and 31 United States Code 3711, 3717 and 3718.

Objectives To Be Met By the Matching Program: HUD expects that this computer matching program will enable it to quickly and effectively identify and locate individual debtors, and to obtain current mailing addresses of defaulted debtors.

Records To Be Matched: HUD will utilize its system of records entitled, Accounting Records, HUD/Dept-2. HUD will submit approximately 1,500 records annually of individuals with outstanding federal debts for matching purposes. These records are extracted from the Privacy Act system of records, HUD/Dept-2, Accounting Records, maintained in the following programs and automated systems: (1) Title I—Debt Management Collection Systems; (2) Section 312—Loan Mortgage System; and (3) Departmental Claims—Delinquent Debt Control System. The IRS will extract taxpayer address information from Privacy Act System of Records: Individual Master File, Treas/IRS 24.030, maintained at the Martinsburg Computing Center, Martinsburg, WV. This file contains approximately 20 million records of taxpayers who have filed U.S. Individual Income Tax returns.

Notice Procedures: The IRS provides direct notice to taxpayers in the instructions to Form 1040, 1040A, and 1040EZ that information provided on U.S. Individual Income Tax Returns may be given to other federal agencies, as provided by law. HUD agrees to ensure that each applicant, at the time of application, receives written notice that the information provided on the application is subject to verification through computer matching with other federal agencies for the purpose of locating delinquent debtors. Direct notice consists of appropriate language printed on its application forms or a separate handout provided to the individual.

Categories of Records/Individuals Involved: The debtor records include these data elements: SSN, claim number, program code, and indication of indebtedness. Categories of records include: records of claims and defaults, repayment agreements, credit reports, financial statements, and records of foreclosures.

Period of the Match: Matching will begin at least 40 days from the date copies of the signed (by both Data Integrity Boards) computer matching agreement are sent to both Houses of Congress or at least 30 days from the date this notice is published in the **Federal Register**, whichever is later, providing no comments are received which will result in a contrary determination. The matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other in writing to terminate or modify the agreement.

Dated: March 10, 2004.

Gloria R. Parker,

Chief Technology Officer.

[FR Doc. 04–6160 Filed 3–18–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Assistant Secretary—Water and Science; Central Utah Project Completion Act; Notice of Intent To Prepare a Draft Environmental Assessment for the Execution of a Lease of Power Privilege Contract and the Construction, Operation, and Maintenance of a Non-Federal Hydroelectric Generation Facility on Jordanelle Dam, Bonneville Unit, Central Utah Project

AGENCY: Office of the Assistant Secretary—Water and Science, Interior.

ACTION: Notice of intent to prepare a draft Environmental Assessment (EA) for the execution of a Lease of Power Privilege contract and the construction, operation, and maintenance of a non-federal hydroelectric generation facility on Jordanelle Dam, Wasatch County, Utah, pursuant to the lease.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended; Public Law 102–575, Central Utah Project Completion Act (CUPCA), as amended; and the July 2, 1999, **Federal Register** Notice (FR Doc. 99–16852) the Department of the Interior is initiating a NEPA process with public involvement for the execution of a Lease of Power Privilege contract and the construction, operation, and maintenance of a non-federal hydroelectric generation facility on Jordanelle Dam, of the Bonneville Unit, Central Utah Project and associated power transmission lines and facilities. Through a competitive selection process the joint application of the Central Utah Water Conservancy District (District) and Heber Light and Power (HL&P) was chosen as the potential lessee to develop hydropower at Jordanelle Dam. Construction and generation of power will be accomplished by the non-federal partnership of the District and HL&P through a Lease of Power Privilege. A lease contract will be executed among the District, HL&P, and the Department, which will describe the development, operation, and maintenance of a hydroelectric generation facility at Jordanelle Dam, consistent with the purposes and operations of the Bonneville Unit. Development of a hydroelectric facility will not change the operation of Jordanelle Dam and Reservoir.

DATES: Public meeting(s) will be announced in local newspapers. The purpose of the meeting(s) will be to provide information and request public input.

FOR FURTHER INFORMATION CONTACT: Additional information on matters related to this **Federal Register** notice can be obtained from Mr. Reed R. Murray, Deputy Program Director, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo UT 84606–6154, (801) 379–1237, *rmurray@uc.usbr.gov*. Written comments may be submitted to this same address.

SUPPLEMENTARY INFORMATION: The Central Utah Project's Bonneville Unit, located in northern Utah, was authorized for construction, including hydroelectric power, by the Colorado River Storage Project (CRSP) Act of April 11, 1956 (ch. 203, 70 Stat. 105)(CRSPA). The construction and operation of a hydroelectric generating facility below Jordanelle Dam was contemplated in the 1979 Municipal and Industrial System (M&I) Final Environmental Impact Statement (EIS). The 1987 Final Supplement to the M&I Final EIS deferred construction of a powerplant at Jordanelle awaiting non-Federal participation. The potential to produce hydropower was incorporated in the construction of Jordanelle Dam. The proposed Draft Environmental Assessment will rely on and update the 1987 Final Supplement to the M&I Final EIS regarding construction of a powerplant at Jordanelle Dam. The operation of Jordanelle Dam and Reservoir will remain the same as described in the 1987 Final Supplement to the Final EIS.

The Central Utah Project Completion Act (CUPCA), comprised of Titles II–VI of the Act of October 30, 1992 (106 Stat. 4600, Pub. L. 102–575) authorized the construction of other features of the Bonneville Unit. Section 208 of the CUPCA provides that power generation facilities associated with the CUP be developed and operated in accordance with the CRSPA, which explicitly embodies all Reclamation law except as otherwise provided in the CRSPA. In accordance with a **Federal Register** notice published July 2, 1999 (Volume 64, Number 127, Pages 36030–36032), Interior, in consultation with the Western Area Power Administration, selected the joint proposal of the District/HL&P to develop non-federal hydroelectric power at Jordanelle Dam through a lease of power privilege. A lease of power privilege is an alternative to federal hydroelectric power development. A lease of power privilege grants a non-federal entity the right to utilize, consistent with CUP purposes, water power head and storage at and/or operationally in conjunction with the CUP, for non-federal electric power generation and sale by the entity. The general authority for lease of power privilege under Reclamation law includes, among others, the Town Sites and Power Development Act of 1906 (43 U.S.C. 522) and the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) (1939 Act). The intent to hold public negotiations for the lease of power privilege contract was announced in the **Federal Register** on October 25, 2000 (Volume 65, Number 207, Pages 63879–63880). Negotiations on the lease contract began on November 12, 2000, and are still underway. Power developed by the Jordanelle hydroelectric generation facility will be purchased by Heber Light and Power and sold to their customers.

Dated: February 2, 2004.

Ronald Johnston,

Program Director, Department of the Interior.

[FR Doc. 04–6175 Filed 3–18–04; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

2004 Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp) Contest

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service announces the dates and locations of the 2004 Federal Duck Stamp contest; the public is invited to enter and to attend.

DATES: 1. The official date to begin submission of entries to the 2004 contest is June 1, 2004. All entries must be postmarked no later than midnight, Monday, August 16, 2004.

2. The public may first view the 2004 Federal Duck Stamp Contest entries on Monday, October 4, 2004.

3. Judging will be held on Tuesday, October 5, 2004.

ADDRESSES: Requests for complete copies of the contest rules, reproduction rights agreement, and display and participation agreement may be requested by calling 1–703–358–2000, or requests may be addressed to: Federal Duck Stamp Contest, U.S. Fish and Wildlife Service, Department of the Interior, 4401 North Fairfax Drive, Mail Stop MBSP–4070, Arlington, VA 22203–1622. You may also download the information from the Federal Duck Stamp Web site at *http://duckstamps.fws.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Chris Tollefson,Chief, Federal Duck Stamp Office (703) 358–2000, E-mail*Chris_Tollefson@fws.gov* or fax: (703) 358–2009.

SUPPLEMENTARY INFORMATION:

Background

On March 16, 1934, Congress passed and President Franklin Roosevelt signed the Migratory Bird Hunting Stamp Act. Popularly known as the Duck Stamp Act, it required all waterfowl hunters 16 years or older to buy a stamp annually. The revenue generated was originally earmarked for the Department of Agriculture, but 5 years later was transferred to the Department of the Interior and the U.S. Fish and Wildlife Service to buy or lease waterfowl sanctuaries.

In the years since its enactment, the Federal Duck Stamp Program has become one of the most popular and successful conservation programs ever initiated. Today, some 1.6 million stamps are sold each year, and as of 2002, FederalDuck Stamps have generated more than $600 million for

the preservation of more than 5 million acres of waterfowl habitat in the United States. Numerous other birds, mammals, fish, reptiles, and amphibians have similarly prospered because of habitat protection made possible by the program. An estimated one-third of the Nation's endangered and threatened species find food or shelter in refuges preserved by Duck Stamp funds. Moreover, the protected wetlands help dissipate storms, purify water supplies, store flood water, and nourish fish hatchlings important for sport and commercial fisherman.

The Contest

The first Federal Duck Stamp was designed at President Franklin Roosevelt's request by Jay N. ''Ding'' Darling, a nationally known political cartoonist for the Des Moines Register and a noted hunter and wildlife conservationist. In subsequent years, noted wildlife artists were asked to submit designs. The first contest was opened in 1949 to any U.S. artist who wished to enter, and 65 artists submitted a total of 88 design entries in the only art competition of its kind sponsored by the U.S. Government. To select each year's design, a panel of noted art, waterfowl, and philatelic authorities are appointed by the Secretary of the Interior. Winners receive no compensation for the work, except a pane of their stamps, but winners may sell prints of their designs, which are sought by hunters, conservationists, and art collectors.

The public may view the 2004 Federal Duck Stamp entries on Monday, October 4, 2004, in the Department of the Interior Auditorium (''C'' Street entrance), 1849 C Street, NW., Washington, DC. This year's judging will be held Tuesday, October 5, 2004.

Eligible Species

Species eligible for the 2004 contest include American wigeon, wood duck, gadwall, ring-necked duck, and hooded merganser. Entries featuring a species other than the above listed species will be disqualified.

Dated: February 9, 2004.

Steve Williams,

Director.

[FR Doc. 04–6170 Filed 3–18–04; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–912–1020–PH 24 1A]

Idaho Resource Advisory Councils: Notice of Intent To Establish and Call for Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to establish and call for nominations for the four Idaho BLM Resource Advisory Councils.

SUMMARY: BLM is publishing this notice in accordance with the Federal Land Policy and Management Act (FLPMA) and section 9(a)(2) of the Federal Advisory Committee Act (FACA). The Bureau of Land Management (BLM) gives notice that the Secretary of the Interior is establishing four Resource Advisory Councils (Council) in Idaho to represent the four redefined BLM Districts in Idaho. This notice is also to solicit public nominations for each of the four Idaho BLM Resource Advisory Councils (RACs) to replace/renew members whose terms expire this year. The RACs provide advice and recommendations to BLM on land use planning and management of the public lands within their geographic areas.

DATES: All completed nomination forms and nomination letters should be received in the BLM office listed above no later than May 3, 2004.

ADDRESSES: Nominations for RACs should be sent to the appropriate BLM offices listed below:

	BLM RAC coordinator	Address	Telephone
Boise District RAC	MJ Byrne	3948 Development Avenue, Boise, Idaho 83705	208–384–3393
Coeur d'Alene District RAC	Stephanie Snook	1808 N. Third Street, Coeur d'Alene, Idaho 83814	208–769–5004
Idaho Falls District RAC	David Howell	1405 Hollipark Drive, Idaho Falls, Idaho 83401	208–524–7559
Twin Falls District RAC	Sky Huffaker	400 West F Street, Shoshone, Idaho 83352	208–732–7307

FOR FURTHER INFORMATION CONTACT: Jerry Rohnert, Idaho RAC Coordinator, 1387 South Vinnell Way, Boise Idaho 83709; 208–373–4017; or e-mail *Jerry_Rohnert@blm.gov.*

SUPPLEMENTARY INFORMATION: The FLPMA directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the FACA. As required by FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. These include three categories:

Category One—Holders of federal grazing permits and representatives of energy and mineral development, timber industry, transportation or rights-of-way, off-highway vehicle use, and commercial recreation;

Category Two—Representatives of nationally or regionally recognized environmental organizations, archaeological and historic interests, dispersed recreation, and wild horse and burro groups;

Category Three—Holders of State, county or local elected office, employees of a State agency responsible for management of natural resources, academicians involved in natural sciences, representatives of Indian tribes, and the public-at-large.

Individuals may nominate themselves or others. Nominees must be residents of the State or States in which the RAC has jurisdiction. Nominees will be evaluated based on their education, training, and experience and their knowledge of the geographical area of the RAC. Nominees should have demonstrated a commitment to collaborative resource decision-making. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications.

Simultaneous with this notice, BLM will issue press releases providing additional information for submitting nominations, with specifics about the number and categories of member positions available for each Idaho BLM RAC. Public nominations will be considered until May 3, 2004.

Dated: March 4, 2004.

Susan Giannettino,

Acting Idaho State Director.

[FR Doc. 04–6296 Filed 3–17–04; 11:59 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 28, 2004.

Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by April 5, 2004.

Patrick W. Andrus,

Acting, Keeper of the National Register of Historic Places.

Arizona

Coconino County

Fort Tuthill Historic District, AZ 89a and I–17, Flagstaff, 04000257.

Pima County

Fox Commercial Building, (Downtown Tucson, Arizona MPS), 27 W. Congress St., Tucson, 04000258.

San Clemente Historic District, Jct. of Alvernon and Broadway, Tucson, 04000256.

Colorado

Denver County

Montview Boulevard Presbyterian Church, 1980 Dahlia St., Denver, 04000262.

Logan County

Powell and Blair Stone Ranch, Approx. 1 mi. N of jct. of U.S. 138 and 65 Rd., Proctor, 04000261.

Montrose County

Benevolent and Protective Order of Elks Lodge, 107 S. Cascade Ave., Montrose, 04000260.

Montrose Masonic Temple, Lodge No. 63, 509–513 E. Main St., Montrose, 04000259.

Florida

Union County

King, John A., House, 105 SE 1st Ave., Lake Butler, 04000264.

Volusia County

Orange City Historic District, (Orange City, Florida MPS), Roughly Banana, Carpenter, French and Orange Aves., Orange City, 04000265.

Iowa

Polk County

Boyd, Byron and Ivan, House, 304 42nd St., Des Moines, 04000263.

Mississippi

Forrest County

West Sixth Street USO Building, 305 E. Sixth St., Hattiesburg, 04000267.

Montana

Missoula County

Missoula Mercantile Warehouse, (Missoula MPS), 221, 229 and 231 E. Front St., Missoula, 04000266.

Pennsylvania

Elk County

Grant, O.B., House, 610 W. Main St., Ridgway Township, 04000268.

Virginia

Richmond Independent City

Virginia Department of Highways Building, 1401 E. Broad St., Richmond (Independent City), 04000270.

Williams, Charlotte, Memorial Hospital, 1201 E. Broad St., Richmond (Independent City), 04000269.

Wisconsin

Milwaukee County

North Sherman Boulevard Historic District, N. Sherman Blvd. Roughly bounded by W. Keefe Ave. and W. Lisbon Ave., Milwaukee, 04000271.

A request for Removal has been made for the following resource:

Mississippi

Wayne County

Waynesboro Bridge, (Historic Bridges of Mississippi TR), Spans Chickasawhay River on Old U.S. 84, Waynesboro vicinity, 88002494.

[FR Doc. 04–6165 Filed 3–18–04; 8:45 am]

BILLING CODE 4312–51–U

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determination in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts,'' shall be the minimum paid by

contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA030001 (Jun. 13, 2003)
MA030002 (Jun. 13, 2003)
MA030003 (Jun. 13, 2003)
MA030004 (Jun. 13, 2003)
MA030005 (Jun. 13, 2003)
MA030006 (Jun. 13, 2003)
MA030007 (Jun. 13, 2003)
MA030008 (Jun. 13, 2003)
MA030009 (Jun. 13, 2003)
MA030010 (Jun. 13, 2003)
MA030017 (Jun. 13, 2003)
MA030018 (Jun. 13, 2003)
MA030020 (Jun. 13, 2003)
MA030021 (Jun. 13, 2003)
New Jersey
NJ030001 (Jun. 13, 2003)
NJ030002 (Jun. 13, 2003)
NJ030003 (Jun. 13, 2003)
NJ030004 (Jun. 13, 2003)
NJ030005 (Jun. 13, 2003)
NJ030007 (Jun. 13, 2003)
NJ030009 (Jun. 13, 2003)
Rhode Island
RI030001 (Jun. 13, 2003)
RI030002 (Jun. 13, 2003)

Volume II

District of Columbia
DC030001 (Jun. 13, 2003)
DC030003 (Jun. 13, 2003)
Delaware
DE030002 (Jun. 13, 2003)
DE030009 (Jun. 13, 2003)
Pennsylvania
PA030003 (Jun. 13, 2003)
PA030013 (Jun. 13, 2003)
PA030017 (Jun. 13, 2003)
PA030026 (Jun. 13, 2003)
West Virginia
WV030001 (Jun. 13, 2003)
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WV030003 (Jun. 13, 2003)
WV030006 (Jun. 13, 2003)
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Volume III

Alabama
AL030008 (Jun. 13, 2003)
AL030044 (Jun. 13, 2003)
Georgia
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Kentucky
KY030001 (Jun. 13, 2003)
KY030002 (Jun. 13, 2003)
KY030003 (Jun. 13, 2003)
KY030004 (Jun. 13, 2003)
KY030007 (Jun. 13, 2003)
KY030025 (Jun. 13, 2003)
KY030027 (Jun. 13, 2003)
KY030028 (Jun. 13, 2003)
KY030029 (Jun. 13, 2003)
KY030049 (Jun. 13, 2003)
Tennessee
TN030041 (Jun. 13, 2003)

Volume IV

IL030001 (Jun. 13, 2003)
IL030004 (Jun. 13, 2003)
IL030005 (Jun. 13, 2003)
IL030006 (Jun. 13, 2003)
IL030007 (Jun. 13, 2003)
IL030008 (Jun. 13, 2003)
IL030009 (Jun. 13, 2003)
IL030012 (Jun. 13, 2003)
Ohio
OH030001 (Jun. 13, 2003)
OH030002 (Jun. 13, 2003)
OH030003 (Jun. 13, 2003)
OH030009 (Jun. 13, 2003)
OH030013 (Jun. 13, 2003)
OH030022 (Jun. 13, 2003)
OH030027 (Jun. 13, 2003)
OH030028 (Jun. 13, 2003)
OH030029 (Jun. 13, 2003)
Wisconsin
WI030010 (Jun. 13, 2003)

Volume V

Missouri
MO030002 (Jun. 13, 2003)
MO030003 (Jun. 13, 2003)
New Mexico
NM030001 (Jun. 13, 2003)

Volume VI

None

Volume VII

Arizona
AZ030001 (Jun. 13, 2003)
AZ030005 (Jun. 13, 2003)
AZ030012 (Jun. 13, 2003)
California
CA030028 (Jun. 13, 2003)
CA030029 (Jun. 13, 2003)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov)* of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers

Signed in Washington, DC this 11th day of March, 2004.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 04–5898 Filed 3–18–04; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Slope and Shaft Sinking Plans

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This

program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before May 18, 2004.

ADDRESSES: Send comments to Darrin King, Chief, Records Management Branch, 1100 Wilson Boulevard, Room 2139, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk or via Internet e-mail to *king.darrin@dol.gov,* along with an original printed copy. Mr. King can be reached at (202) 693–9838 (voice), or (703) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: The proposed information collection request may be viewed on the Internet by accessing the MSHA Home page (*http://www.msha.gov*) and selecting Statutory and Regulatory Information, then Paperwork Reduction Act submission (*http://www.msha.gov/regspwork.htm*), or by contacting Darrin King, Records Management Branch, U.S. Department of Labor, Mine Safety and Health Administration, Room 2139, 1100 Wilson Boulevard, Arlington, VA 22203–1984. Mr. King can be reached at *king.darrin@dol.gov* (Internet e-mail), (703) 693–9838 (voice), or (703) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

The standard 30 CFR 77.1900 was enacted in 1971 and was amended in 1982 and again in 1995. The standard requires underground coal mine operators to develop a prudent engineered design plan to develop a slope or shaft whenever an operator decides to open such a coal mine. The plan is required by the standard and is to be reviewed and approved by MSHA before the actual hazardous work begins.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to Slope and Shaft Sinking Plans. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home page (*http://www.msha.gov*) and selecting ''Rules and Regs'' then ''Paperwork Reduction Act Supporting Statements'' (*http://www.msha.gov/regspwork.htm*)'', or by contacting the employee listed above in the **FOR FURTHER INFORMATION CONTACT** section of this notice for a hard copy.

III. Current Actions

The 78 slope or shaft development plans that MSHA receives on an annual basis, are reviewed to ensure that the required work is performed in a safe manner, and it protects those miners performing the work. Prudent engineering design does evolve along with improved machinery to perform the work, but there has not been any revision to the requirements for such a plan. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to Slope and Shaft Sinking Plans.

Type of Review: Extension.
Agency: Mine Safety and Health Administration.
Title: Slope and Shaft Sinking Plans.
OMB Number: 1219–0019.
Recordkeeping: Records are normally required to be kept for 3 years.
Affected Public: Business or other for-profit.
Cite/Reference/Form/etc: 30 CFR 77.1900.
Total Respondents: 78.
Frequency: On occasion.
Total Responses: 78.
Average Time per Response: 20 hours.
Estimated Total Burden Hours: 1,560.
Total Burden Cost (Operating/Maintaining): $1,170.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated in Arlington, Virginia, this 11th day of March, 2004.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 04–6176 Filed 3–18–04; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection RequestSubmitted for Public Comment and Recommendations; Qualification and Certification Program

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506 (c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the Sections 317(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 877(c), and 30 CFR 75.1702 which prohibits persons from smoking or carrying smoking materials underground or in places where there is a fire or explosion hazard.

DATES: Submit comments on or before May 18, 2004.

ADDRESSES: Send comments to Darrin King, Chief, Records Management Division, Administration and Management 1100 Wilson Boulevard, Room 2139, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to *King-Darrin@MSHA.Gov*. Mr. King can be reached at (202) 693–9838 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: , Darrin King, Chief, Records Management Division, U.S. Department of Labor, Mine Safety and Health Administration, Room 2139, 1100 Wilson Boulevard, Arlington, VA

22209–3939. Mr. King can be reached at *King-Darrin@MSHA.Gov* (Internet E-mail), (202) 693–9838 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Under the Mine Act and § 75.1702, coal mine operators are required to develop programs to prevent persons from carrying smoking materials, matches, or lighters underground and to prevent smoking in hazardous areas, such as in or around oil houses, explosives magazines, etc. The Mine Act and the standard further require that the mine operator submit the program plan to MSHA for approval. The purpose of the program is to insure that a fire or explosion hazard does not occur.

A cigarette lighter was found to be the cause of a mine explosion that took the lives of 13 men in December 1981 and there have been many other similar occurrences in the past. As recently as May 1994, a mine explosion resulted in two fatalities, serious injuries to other survivors and severe damage to the mine. MSHA's investigation determined that the explosion's most likely source of ignition was the open flame of a cigarette lighter or match.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA Home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''Federal Register Documents.''

III. Current Actions

The mine operator uses the information to conduct the program. MSHA uses the information to determine the mine operator's compliance with the standard and that a program is developed and implemented to prevent smoking in hazardous areas.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Program to Prevent Smoking in Hazardous Areas.

OMB Number: 1219–0041.

Recordkeeping: While there is no specific requirement that records be maintained for more than three years, all underground coal mines must have an approved smoking materials search plan in effect during the entire time they are operating.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Respondents: 184.

Estimated Time Per Respondent: .5 hours.

Total Burden Hours: 92 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 12th day of March, 2004.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 04–6177 Filed 3–18–04; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Health Standards for Diesel Particulates (Underground Coal)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before May 18, 2004.

ADDRESSES: Send comments to, Darrin King, Chief, Records Management Branch, 1100 Wilson Boulevard, Room 2139, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to *king.darrin@dol.gov.* Mr. King can be reached at (202) 693–9838 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: , Darrin King, Chief, Records Management Branch, U.S. Department of Labor, Mine Safety and Health Administration, Room 2139, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Mr. King can be reached at *king.darrin@dol.gov* (202) 693–9838 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

The Mine Safety and Health Administration's (MSHA) standards and regulations for diesel particulate in underground coal mines serve to protect coal miners who work on and around diesel-powered equipment. The internal combustion engines that power diesel equipment expose miners to potential health risks from exposure to diesel exhaust emissions. These standards and regulations contain information collection requirements for underground coal mine operators.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''Federal Register Documents.''

III. Current Actions

Currently, the Mine Safety and Health Administration is soliciting comments concerning the extension of the information collection requirements related to the 30 CFR § 75.1915/72.503, § 72.510, § 72.520, and as a result of § 72.500, diesel manufacturers affected under Part 7 or Part 36.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Diesel Particulate Matter Exposure of Underground Coal Miners.

OMB Number: 1219–0124.

Recordkeeping: The information gathered is required to be recorded, maintained for the period specified, and made accessible, upon request, to authorized representatives of the Secretary of Labor and miners' representatives. This may be done in a traditional manner by recording on paper, or electronically by computer.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Respondents: 148.

Estimated Time Per Respondent: 4.8 hours annually.

Total Burden Hours: 708.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $7,878.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 12th day of March, 2004.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 04–6178 Filed 3–18–04; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Safety Defects, Examination, Correction, and Records

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before May 18, 2004.

ADDRESSES: Send comments to Darrin King, Chief, Records Management Branch, 1100 Wilson Boulevard, Room 2139, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via Internet e-mail to *king.darrin@dol.gov*, along with an original printed copy. Mr. King can be reached at (202) 693–9838 (voice), or (703) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: The proposed information collection request may be viewed on the Internet by accessing the MSHA Home page (*http://www.msha.gov*) and selecting Statutory and Regulatory Information then Paperwork Reduction Act submission (*http://www.msha.gov/regspwork.htm*), or by contacting Darrin King, Records Management Branch, U.S. Department of Labor, Mine Safety and Health Administration, Room 2139, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Mr. King can be reached at *king.darrin@dol.gov* (Internet e-mail), (703) 693–9838 (voice), or (703) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Title 30 CFR 56.13015 and 57.13015 require that compressed-air receivers and other unfired pressure vessels be inspected by inspectors holding a valid National Board Commission and in accordance with the applicable chapters of the National Board Inspection Code, a manual for Boiler and Pressure Vessels Inspectors, 1979.

Title 30 CFR 56.13030 and 57.13030 require that fired pressure vessels (boilers) be equipped with safety devices approved by the American Society of Mechanical Engineers (ASME) to protect against hazards from overpressure, flameouts, fuel interruptions and low water level. 56/57.13030 requires that records of inspections and repairs be retained by the mine operator in accordance with the requirements of the ASME Boiler and Pressure Vessel Code and the National Board Inspection Code (progressive records—no limit on retention time) and made available to the Secretary or his/her authorized representative.

Title 30 CFR 56.14100 and 57.14100 require equipment operators to inspect equipment, machinery, and tools that are to be used during a shift for safety defects before the equipment is placed in operation. Defects affecting safety are required to be corrected in a timely manner. In instances where the defect makes continued operation of the equipment unsafe, the standards require removal from service, tagging to identify that it is out of use, and repair before use is resumed.

Title 30 CFR 56.18002 and 57.18002 require that a competent person designated by the operator shall examine each working place at least once each shift for conditions which may adversely affect safety or health. A record that such examinations were conducted shall be kept by the operator for a period of one year, and shall be made available for review by the Secretary or his/her authorized representative.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Safety Defects, Examination, Correction, and Records. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

The proposed information collection request may be viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*), selecting ''Statutory and Regulatory Information,'' then ''Paperwork Reduction Act Submission,'' or by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice for a hard copy of this request.

III. Current Actions

Inspection records denote any hazards that were discovered and how the hazards or unsafe conditions were abated. Federal inspectors use the records to ensure that unsafe conditions are identified early and corrected.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Safety Defects, Examination, Correction, and Records.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Safety Defects; Examination, Correction and Records.

OMB Number: 1219–0089.

Number of Respondents: 12,163.

Cite/Reference	Annual responses	Frequency	Average response time	Annual burden hours
30 CFR 56/57.13015	3,238	Annually	0.17	540
30 CFR 56/57.13030	488	Annually	0.17	81
30 CFR 56/57.14100	8,999,857	Per shift	0.08	719,989
30 CFR 56/57.18002	2,438,987	Per shift	0.20	487,797
Grand Total:	11,442,570			1,208,407

Total Burden Cost (Operating/Maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated in Arlington, Virginia, this 12th day of March, 2004.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 04–6179 Filed 3–18–04; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINSTRATION

[Notice (04–045)]

Return to Flight Task Group; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Return to Flight Task Group (RTF TG).

DATES: Friday, April 16, 2004, from 8 a.m. until 11 a.m.

ADDRESSES: Webster Civic Center, 311 Pennsylvania, Webster, TX 77598.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Lengyel at (281) 792–7523.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the meeting room. Attendees will be requested to sign a register.

The agenda for the meeting is as follows:

—Welcome remarks from Co-Chair
—Status reports from Technical, Operations, and Management Panel Chairs on NASA's implementation of all Columbia Accident Investigation Board return to flight findings/recommendations
—Remarks from the Integrated Vehicle Assessment Sub-Panel
—Remarks from Editorial Sub-Panel
—Action item summary from Executive Secretary
—Closing remarks from Co-Chair

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Michael F. O'Brien,

Assistant Administrator for External Relations, National Aeronautics and Space Administration.

[FR Doc. 04–6193 Filed 3–18–04; 8:45 am]

BILLING CODE 7510–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26386; 812–13017]

BLDRS Index Funds Trust, et al.; Notice of Application

March 15, 2004.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A) and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

Summary of the Application: The order would permit certain registered management investment companies and unit investment trusts to acquire shares of certain registered unit investment trusts that operate as exchange-traded funds and are outside the same group of investment companies. The order also would amend two prior orders.

Applicants: BLDRS Index Funds Trust (''BLDRS Trust''), Nasdaq-100 Trust, Series 1 (''Nasdaq-100 Trust''), and Nasdaq Financial Products Services, Inc. (''NFPS'').

Filing Dates: The application was filed on September 11, 2003, and amended on March 4, 2004.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 8, 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 who wish to be

notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Nasdaq Financial Products Services, Inc., The Nasdaq Stock Market, 9513 Key West Avenue, Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: Stacy L. Fuller, Senior Counsel, and Michael W. Mundt, Senior Special Counsel, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations:

1. BLDRS Trust and Nasdaq-100 Trust (together, the ''Trusts'') are unit investment trusts organized under New York law and registered under the Act. BLDRS Trust is comprised of separate series (''BLDRS Index Funds''). The BLDRS Index Funds and the Nasdaq-100 Trust (together, the ''NFPS ETFs'') seek to provide investment results that correspond generally, before fees and expenses, to the price and yield performance of specified benchmark indices (''Indices'' or ''Benchmark Indices''). The NFPS ETFs operate as exchange-traded funds (''ETFs''). NFPS is the sponsor of each NFPS ETF.

2. Applicants request relief to permit registered management investment companies and unit investment trusts to acquire shares of the Nasdaq-100 Trust (''Nasdaq-100 Shares'') and of the BLDRS Index Funds (''Trust Shares,'' and together with Nasdaq-100 Shares, ''Units'') beyond the limitations in section 12(d)(1)(A). To the extent that an Investing Fund (as defined below) owns 5% or more of the Units of an NFPS ETF, applicants further request relief from sections 17(a)(1) and (2) of the Act to permit such an NFPS ETF, as an affiliated person of the Investing Fund, to sell Units to, and redeem Units from, the Investing Fund. Applicants request that the relief apply to (i) Nasdaq-100 Trust; (ii) BLDRS Trust and each registered unit investment trust that operates as an ETF, is currently or subsequently part of the same ''group of investment companies'' as BLDRS Trust within the meaning of section 12(d)(1)(G)(ii) of the Act, and is sponsored by NFPS or an entity controlling, controlled by or under common control with NFPS (included in the defined term ''NFPS ETFs''); and (iii) registered management investment companies (''Investing Management Companies'') and unit investment trusts (''Investing Trusts'') that are not sponsored or advised by NFPS or an entity controlling, controlled by, or under common control with NFPS and that are not part of the same ''group of investment companies'' as the Trusts within the meaning of section 12(d)(1)(G)(ii) of the Act. Investing Management Companies and Investing Trusts are collectively referred to as ''Investing Funds.'' [1] Investing Trusts do not include NFPS ETFs. Each Investing Management Company will be advised by an investment adviser that is registered under the Advisers Act or exempt from registration (''Advisor'') and may be advised by investment adviser(s) within the meaning of section 2(a)(20)(B) of the Act (each, a ''Subadviser'').

3. Applicants state that the NFPS ETFs will offer the Investing Funds simple and efficient vehicles to achieve their asset allocation, diversification and other investment objectives, and to implement various investment strategies. Among other purposes, applicants assert that the NFPS ETFs provide instant and highly liquid exposure to the markets represented by each Benchmark Index and permit investors to achieve such exposure through a single transaction instead of the many transactions that might otherwise be needed to obtain comparable market exposure.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit the Investing Funds to acquire Units beyond the limits set forth in section 12(d)(1)(A).

3. Applicants state that the proposed arrangement and conditions will adequately address the policy concerns underlying section 12(d)(1)(A), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by an Investing Fund or its affiliates over the NFPS ETFs. To limit the influence that an Investing Fund may have over an NFPS ETF, applicants propose a condition that prohibits the Advisor or a sponsor to an Investing Trust (''Sponsor'') and certain affiliates from controlling (individually or in the aggregate) an NFPS ETF within the meaning of section 2(a)(9) of the Act. The condition also prohibits any Subadviser and certain affiliates from controlling (individually or in the aggregate) an NFPS ETF within the meaning of section 2(a)(9) of the Act. To limit further the potential for undue influence by the Investing Funds over the NFPS ETFs, applicants propose conditions 2, 3 and 4, stated below, to preclude an Investing Fund and its affiliated entities from taking advantage of an NFPS ETF with respect to transactions between the entities and to ensure the transactions will be on an arm's length basis.

5. As an additional assurance that an Investing Fund understands the implications of an investment by it in an NFPS ETF under the requested order, each Investing Fund and Trust will execute an agreement (''Investing Fund Agreement'') stating that the board of directors or trustees (''Board'') of, and the Advisor and any Subadviser to, an Investing Management Company, and the Sponsor and trustee of an Investing Trust (''Trustee''), as applicable, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order.

6. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. Applicants state that because each NFPS ETF is a unit investment trust that does not charge any advisory fee, there will be no layered or duplicative advisory fees. Further, applicants note that Units are sold without sales charges, and

[1] All entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application. An Investing Fund may rely on the requested order only to invest in NFPS ETFs and not in any other registered investment company.

applicants propose a condition that precludes any sales charges and/or service fees charged with respect to shares of an Investing Fund from exceeding the limits applicable to a fund of funds under Conduct Rule 2830 of the National Association of Securities Dealers, Inc. (''Rule 2830''). The Advisor, or Trustee or Sponsor, as applicable, of an Investing Fund also will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation received by the Advisor, or Trustee or Sponsor, or an affiliated person of the Advisor, or Trustee or Sponsor, from an NFPS ETF in connection with the investment by the Investing Fund in the NFPS ETF. Any Subadviser will waive fees otherwise payable to it by an Investing Management Company in an amount at least equal to any compensation received by the Subadviser, or its affiliate, in connection with any investment by the Investing Management Company in the NFPS ETF that is made at the direction of the Subadviser.

7. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that the NFPS ETFs will be prohibited from acquiring securities of any investment company, or company relying on section 3(c)(1) or 3(c)(7) of the Act, in excess of the limits contained in section 12(d)(1)(A). Applicants also represent that the Investing Fund Agreement will require an Investing Fund that exceeds the 5% or 10% limitation in section 12(d)(1)(A)(ii) or (iii), respectively, to disclose in its prospectus that it may invest in ETFs and to disclose, in ''plain English,'' in its prospectus the unique characteristics of the Investing Fund investing in ETFs, including but not limited to the expense structure and any additional expenses of investing in ETFs.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3)(B) of the Act defines an ''affiliated person'' of another person to include any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person.

2. Applicants state that an NFPS ETF could become an affiliated person of an Investing Fund if the Investing Fund acquires 5% or more of an NFPS ETF's securities. Although applicants believe that most Investing Funds will purchase Units in the secondary market and not directly from an NFPS ETF, an Investing Fund might seek to transact directly with an NFPS ETF.[2] Section 17(a) could prevent an NFPS ETF from selling Units to, and redeeming Units from, an Investing Fund that owns 5% or more of an NFPS ETF.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (i) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policies of each registered investment company involved; and (iii) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed arrangement satisfies the standards for relief under sections 6(c) and 17(b) of the Act. Applicants state that the terms of the arrangement are fair and reasonable and do not involve overreaching. Applicants note that any consideration for the purchase or redemption of Units directly from an NFPS ETF will be based on the net asset value (''NAV'') of the NFPS ETF. Applicants state that the proposed arrangement will be consistent with the policies of each Investing Fund and NFPS ETF, and with the general purposes of the Act. Applicants also believe that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

C. Prior Orders

1. Applicants seek to amend certain prior exemptive orders (''Prior Orders'').[3] Specifically, applicants seek to amend condition 2 to each of the Prior Orders so that it is consistent with the relief being requested from section 12(d)(1). Condition 2 currently provides that each NFPS ETF prospectus and Product Description[4] will clearly disclose that, for purposes of the Act, Units are issued by the NFPS ETF and that the acquisition of Units by investment companies is subject to the restrictions of section 12(d)(1) of the Act. Under new condition 2, Investing Funds will be alerted that they may invest in the NFPS ETFs in excess of the limits of section 12(d)(1) to the extent that they comply with the terms and conditions of the requested order granting relief from section 12(d)(1), including the requirement that they enter into an Investing Fund Agreement with the NFPS ETF regarding the terms of the investment. Applicants will replace current condition 2 in BLDRS Trust's Prior Order with condition 9, as stated below, and in Nasdaq-100 Trust's Prior Order with condition 12, as stated below.

2. Applicants also seek to amend the defined term ''Business Day'' in each of the Prior Orders to mean any day that The Nasdaq Stock Market, Inc. is open for business or that the relevant NFPS ETF is open for business as required by section 22(e) of the Act. In connection with the amendment to the defined term ''Business Day,'' applicants seek to replace conditions 4 and 5, respectively, of BLDRS Trust's Prior Order with conditions 10 and 11, as stated below. Applicants also seek to add to Nasdaq-100 Trust's Prior Order new conditions 3 and 4, respectively, as stated in conditions 13 and 14 below.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. (a) The Advisor or Sponsor, (b) any person controlling, controlled by, or under common control with an Advisor or Sponsor, and (c) any investment company and any issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act that is advised by an Advisor or sponsored by a Sponsor, or any person controlling, controlled by, or under common control with an Advisor or Sponsor (together, the ''Investing Fund's Advisory Group'') will not control (individually or in the aggregate) an NFPS ETF within the meaning of section 2(a)(9) of the Act. (a) Any Subadviser, (b) any person controlling, controlled by, or under common control with the Subadviser, and (c) any investment company or issuer that would be an investment

[2] Units are only purchased and redeemed directly from an NFPS ETF in large blocks (*e.g.*, 50,000 Units) called ''creation units.''

[3] The Prior Orders are BLDRS Index Funds Trust, *et al.*, Investment Company Act Release Nos. 25772 (Oct. 17, 2002) (notice) and 25797 (Nov. 8, 2002) (order) and Nasdaq-100 Trust Series 1, *et al.*, Investment Company Act Release Nos. 23668 (Jan. 27, 1999) (notice) and 23702 (Feb. 22, 1999) (order).

[4] A ''Product Description'' is a document that accompanies secondary market trades of Units and provides a plain English overview of a Trust.

company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) that is advised by the Subadviser or any person controlling, controlled by, or under common control with the Subadviser (together, the ''Investing Fund's Subadvisory Group'') will not control (individually or in the aggregate) an NFPS ETF within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding Units of an NFPS ETF, an Investing Fund's Advisory Group or an Investing Fund's Subadvisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding Units of an NFPS ETF, it will vote its Units in the same proportion as the vote of all other Unitholders.

2. An Investing Fund and its Advisor and any Subadviser, Sponsor, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each, an ''Investing Fund Affiliate'') will not cause any existing or potential investment by the Investing Fund in an NFPS ETF to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and an NFPS ETF or the promoter, sponsor or principal underwriter of an NFPS ETF, and any person controlling, controlled by, or under common control with any of those entities (each, an ''NFPS ETF Affiliate'').

3. The Board, including a majority of the directors or trustees who are not interested persons (as defined in section 2(a)(19) of the Act) of the Investing Management Company, will adopt procedures reasonably designed to assure that the Advisor and any Subadviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from an NFPS ETF or an NFPS ETF Affiliate in connection with any services or transactions.

4. No Investing Fund or Investing Fund Affiliate will cause an NFPS ETF to purchase a security from any underwriting or selling syndicate in which a principal underwriter is an officer, director, member of an advisory board, investment adviser, employee or sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, investment adviser, employee or sponsor is an affiliated person.

5. Before investing in an NFPS ETF in excess of the limits in section 12(d)(1)(A), each Investing Fund and Trust will execute an Investing Fund Agreement stating, without limitation, that the Board of, and the Advisor and any Subadviser to, an Investing Management Company, or the Trustee and Sponsor of an Investing Trust, as applicable, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. The NFPS ETFs and the Investing Fund will maintain and preserve a copy of the order and the agreement for a period of not less than six years from the end of the fiscal year in which any investment occurred, the first two years in an easily accessible place.

6. An Advisor, or a Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by an Investing Fund in an amount at least equal to any compensation received by the Advisor, or Trustee or Sponsor, or an affiliated person of the Advisor, or Trustee or Sponsor, from an NFPS ETF in connection with the investment by the Investing Fund in the NFPS ETF. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received by the Subadviser, or an affiliated person of the Subadviser, in connection with any investment by the Investing Management Company in the NFPS ETF made at the direction of the Subadviser. In the event that the Subadviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

7. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in Rule 2830.

8. An NFPS ETF will not acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act.

Amendments to BLDRS Trust's Prior Order

Applicants agree to replace condition 2 of BLDRS Trust's Prior Order with the following condition:

9. Each Trust's prospectus and Product Description will clearly disclose that, for purposes of the Act, Trust Shares are issued by a registered investment company, and the acquisition of Trust Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in Trust Shares beyond the limits in section 12(d)(1)(A), subject to certain terms and conditions, including that the registered investment company enter into an agreement with the Trust regarding the terms of the investment.

Applicants agree to replace condition 4 of BLDRS Trust's Prior Order with the following condition:

10. The Web site for the Trusts, which will be publicly accessible at no charge, will contain the following information, on a per Trust Share basis, for each Trust: (a) the prior Business Day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each Trust will state that the Web site for the Trusts has information about the premiums and discounts at which the Trust Shares have traded.

Applicants agree to replace condition 5 of BLDRS Trust's Prior Order with the following condition:

11. The prospectus and annual report for each Trust will also include: (a) the information listed in condition 4(b) above, (i) in the case of the prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable), and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Trust Share basis for one, five and ten year periods (or life of the Trust), (i) the cumulative total return and the average annual total return based on NAV and closing price, and (ii) the cumulative total return of the relevant Benchmark Index.

Amendments to Nasdaq-100 Trust's Prior Order

Applicants agree to replace condition 2 of Nasdaq-100 Trust's Prior Order with the following condition:

12. The Trust's prospectus and Product Description will clearly disclose that, for purposes of the Act, Nasdaq-100 Shares are issued by a registered investment company, and the acquisition of Nasdaq-100 Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in Nasdaq-100 Shares beyond the limits in section 12(d)(1)(A), subject to certain terms and conditions, including that the registered investment company enter

into an agreement with the Trust regarding the terms of the investment.

Applicants agree to add the following condition to Nasdaq-100 Trust's Prior Order as condition 3:

13. The Web site for the Trust or the Web site of the American Stock Exchange, each of which will be publicly accessible at no charge, will contain the following information, on a per Nasdaq-100 Share basis, for the Trust: (a) the prior Business Day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for the Trust will state that the relevant Web site has information about the premiums and discounts at which the Nasdaq-100 Shares have traded.

Applicants agree to add the following condition to Nasdaq-100 Trust's Prior Order as condition 4:

14. The prospectus and annual report for the Trust will also include: (a) the information listed in condition 3(b) above, (i) in the case of the prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Nasdaq-100 Share basis for one, five and ten year periods (or life of the Trust), (i) the cumulative total return and the average annual total return based on NAV and closing price and (ii) the cumulative total return of the Index.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–6188 Filed 3–18–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27813]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

March 12, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 5, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 5, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Energy, Inc. (70–10201)

Notice of Proposed Amendments to Charter and Bylaws; Order Authorizing Solicitation of Proxies

Allegheny Energy, Inc. (''Allegheny''), a Maryland corporation and a registered holding company under the Act, 10435 Downsville Pike, Hagerstown, Maryland 21740, has filed this declaration (''Declaration'') under sections 6(a) and 12(e) of the Act and rules 62 and 65 under the Act.

Allegheny requests authority to: (1) Amend its charter to eliminate the requirement of cumulative voting in the election of directors; (2) require simple majority voting on all matters to be submitted for stockholder approval and, specifically, to (a) amend its bylaws or Charter to opt out of the Maryland Control Share Acquisition Act, (b) institute a simple majority vote of stockholders for removal of directors, and (c) eliminate the application of provisions of the Maryland Business Combination Act to the extent these provisions require super-majority approval of certain business combinations; (3) declassify the Board of Directors (items (1) through (3) are referred to below as the ''Proposed Amendments''), and (4) solicit proxies in connection with (a) the implementation of the Proposed Amendments, (b) a stockholder proposal to make the adoption or extension of any stockholder rights agreement (poison pill) subject to a stockholder vote, and (c) other routine matters and certain stockholder proposals.

I. Requested Authority

The Proposed Amendments cover a number of matters related to stockholder rights that have been proposed by Allegheny's management or stockholders and all of which will be submitted for stockholder approval at Allegheny's 2004 annual meeting of stockholders. Specifically, the Proposed Amendments include:

A. *Elimination of Cumulative Voting.* The Allegheny Board of Directors (''Board'') has approved for submission to stockholders an amendment to Article VII.A of Allegheny's Articles of Restatement of Charter of the Company (''Charter'') that would eliminate the requirement of cumulative voting in the election of directors. The Charter currently provides that in the election of directors, each holder of shares of stock entitled to vote shall be entitled to as many votes as shall equal the number of shares of stock held multiplied by the number of directors to be elected. The stockholder may cast all of these votes for a single director or may distribute them among the number of directors to be elected or any two or more of them as the stockholder may see fit. The Maryland General Corporation Law does not require cumulative voting in elections of directors.

The Board believes that the benefits of cumulative voting are much less relevant today than they were when cumulative voting was originally included in the Charter. At that time, minority stockholders had few federal and state remedies to protect them from overreaching by majority stockholders and, therefore, had a greater need for board representation. Today, the Board believes that the disadvantages of cumulative voting outweigh the advantages for large, extensively regulated and widely held companies. Cumulative voting may allow a minority of stockholders to obtain representation on the Board against the wishes of the majority. Allegheny states that for the Board to work effectively for all of the stockholders, each director should feel a responsibility to the stockholders as a whole and not to any special group of minority stockholders. If the proposed amendment is passed and cumulative voting is eliminated, Allegheny maintains that the holders of a majority of shares entitled to vote in an election of directors will be able to elect all of the directors being elected at that time, and no director will be elected by any

special interest group of minority stockholders.

B. *Simple Majority Vote Requirement.* An Allegheny stockholder proposes to submit for stockholder approval a proposal that would require simple majority approval for all matters submitted for stockholder approval. If this proposal is approved, Allegheny would take the following specific actions.

1. Exemption from Control Share Act. The Board proposes to opt out of the Maryland Control Share Acquisition Act (''Control Share Act''), which would remove a super-majority stockholder vote requirement for the approval of control share voting rights. The Control Share Act provides that control shares of a Maryland corporation acquired in a control share acquisition have no voting rights except to the extent approved by a vote of two-thirds of the votes entitled to be cast on the matter. Shares owned by the acquiror, by officers or by directors who are employees of the corporation are excluded from shares entitled to vote on the matter. Control shares are voting shares of stock which, if aggregated with all other shares of stock owned by the acquiror or in respect of which the acquiror is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquiror to exercise voting power in electing directors within certain statutorily-defined ranges (one-tenth but less than one-third, one-third but less than a majority, and more than a majority of the voting power). The Control Share Act also does not apply to the voting rights of shares of stock if the acquisition of those shares has been approved or exempted by the charter or bylaws of the corporation or to shares acquired in a merger, consolidation, or share exchange in which the corporation is a party. Allegheny's Charter and bylaws do not currently contain any approval or exemption from these provisions of Maryland law.

At the 2003 annual meeting of stockholders, a majority of stockholders voted in favor of eliminating super-majority voting requirements. In light of the level of stockholder support for this change, the Board's Nominating and Governance Committee reviewed the matter in January 2004 and recommended that the Board take action consistent with Maryland law to effect this change. Under Maryland law, opting out of the Control Share Act requires an amendment to either Allegheny's Charter or its bylaws. If the proposal to require majority voting on all matters submitted for a stockholder vote is approved by the stockholders, the Board intends to amend the bylaws or the Charter to exempt Allegheny from the Control Share Act. If the proposal is approved and the Board takes the action described, the Board will also take appropriate actions necessary under Maryland law to require stockholder approval to opt back into the requirements of the Maryland Control Share Act.

2. Simple Majority Vote for Removal of Directors. The Board proposes to take action under Maryland law to permit the removal of directors upon approval by a majority of votes entitled to be cast generally in the election of directors. Under an election made by the Board in July 1999, Allegheny currently is subject to provisions of the Maryland General Corporation Law that provide that directors may only be removed by the affirmative vote of at least two-thirds of all votes entitled to be cast by stockholders generally in the election of directors. At the 2003 annual meeting of stockholders, a majority of stockholders voted in favor of eliminating super-majority voting requirements. In light of the level of stockholder support for this change, the Board's Nominating and Governance Committee reviewed the matter in January 2004 and recommended to the Board that the two-thirds requirement for removal of directors be eliminated. If the proposal is approved, the Board will take action so that Allegheny is no longer subject to the Maryland law requiring a two-thirds stockholder vote to remove a director. It should be noted that if the elimination of cumulative voting as discussed above is not approved by the stockholders and the Charter continues to provide for cumulative voting in the removal of directors, Allegheny will remain subject to the mandatory provisions of Maryland law providing that a director may not be removed without cause if the votes cast against the director's removal would be sufficient to elect him if then cumulatively voted in an election of the entire Board (or the class to which the director belongs). If this proposal is approved and the Board takes the action described above, the Board will also take action necessary under Maryland law to require stockholder approval to opt back into the provisions of Maryland law requiring a two-thirds majority vote to remove a director.

3. Exemption from Business Combination Voting Requirements. The Board of Directors proposes to eliminate the application of certain provisions of the Maryland Business Combination Act to the extent these provisions require the concurrence of a greater proportion of votes than the affirmative vote of a majority of the votes entitled to be cast to approve certain business combinations.

Under Maryland law, ''business combinations'' between a Maryland corporation and an interested stockholder or an affiliate of an interested stockholder are prohibited for five years after the most recent date on which the interested stockholder becomes an interested stockholder. These business combinations include a merger, consolidation, share exchange, or, in circumstances specified in the statute, an asset transfer or issuance or reclassification of equity securities. An interested stockholder is defined as: any person who beneficially owns 10% or more of the voting power of the corporation's shares or an affiliate or associate of the corporation who, at any time within the two-year period prior to the date in question, was the beneficial owner of 10% or more of the voting power of the then outstanding voting stock of the corporation. A person is not an interested stockholder under the statute if the board of directors approved in advance the transaction by which he otherwise would have become an interested stockholder. However, in approving a transaction, the board of directors may provide that its approval is subject to compliance, at or after the time of approval, with any terms and conditions determined by the board.

After the five-year prohibition, any business combination between the Maryland corporation and an interested stockholder generally must be recommended by the board of directors of the corporation and approved by the affirmative vote of at least: 80% of the votes entitled to be cast by holders of outstanding shares of voting stock of the corporation and two-thirds of the votes entitled to be cast by holders of voting stock of the corporation other than shares held by the interested stockholder with whom or with whose affiliate the business combination is to be effected or held by an affiliate or associate of the interested stockholder. These super-majority vote requirements do not apply if the corporation's common stockholders receive a minimum price, as defined under Maryland law, for their shares in the form of cash or other consideration in the same form as previously paid by the interested stockholder for its shares.

The statute provides for various exemptions from the application of its provisions, including for business combinations that are exempted by the board of directors prior to the time that the interested stockholder becomes an interested stockholder. The Board has not granted any exemptions. However, if

the proposal to require simple majority voting on all matters submitted for a stockholder vote is approved by the stockholders, the Board will take action consistent with Maryland law to remove the requirement of the two super-majority votes discussed above and instead provide that these business combinations may be approved by a majority of the votes entitled to be cast on the matter. If this proposal is approved and the Board takes the action described above, the Board will also take all action necessary under Maryland law to require stockholder approval to opt back into the super-majority voting provisions of the Maryland Business Combination Act.

C. *Declassification of the Board.* An Allegheny stockholder proposes to present for stockholder consideration a proposal to elect each Allegheny director annually, which would have the effect of declassifying the Board effective as of the 2005 annual meeting of stockholders. In July 1999, the Board made an election under Maryland law to subject Allegheny to provisions of the Maryland General Corporation Law that provide for a classified board. Under these provisions, the Board is currently divided into three classes of directors, with each class serving a three-year term and one class being elected each year. A majority of stockholders voted in favor of eliminating the classified board system at the 2001, 2002 and 2003 annual meetings of stockholders. In light of the level of stockholder support for this change, the Nominating and Governance Committee of the Board reviewed this matter in January 2004 and recommended to the Board that the classified board system be eliminated. If stockholders approve the proposal, the Board intends to take all action required under Maryland law to declassify the Board and to take all further action necessary to implement the change so that the election of directors will be annualized beginning at the 2005 annual meeting of stockholders. If this proposal is approved and the Board takes the action described, the Board will also take all action necessary under Maryland law to require stockholder approval to opt back into the provisions of Maryland law to classify the Board.

D. *Proxy Solicitation in Connection with Stockholder Rights Agreement.* Allegheny's proxy statement will contain a stockholder proposal regarding stockholder input on stockholder rights agreements. Specifically, this proposal seeks to require that adoption or extension of any future stockholder rights agreement be submitted to a stockholder vote. Allegheny seeks authorization to solicit proxies in connection with the stockholder proposal.[1]

II. Order for Solicitation of Proxies

Allegheny has requested that an order be issued authorizing commencement of the solicitation of proxies from the holders of outstanding shares of common stock for approval of the various Charter and bylaw changes discussed in detail above and for the approval of changes in stockholder input with regard to stockholder rights agreements. It appears to the Commission that Allegheny's Declaration regarding the proposed solicitation of proxies should be permitted to become effective immediately under rule 62(d).

III. Rule 54 Analysis

Rule 54 promulgated under the Act states that in determining whether to approve the issue or sale of a security by a registered holding company for purposes other than the acquisition of an exempt wholesale generator (''EWG'') or a foreign utility company (''FUCO''), or other transactions by such registered holding company or its subsidiaries, other than with respect to EWGs or FUCOs, the Commission shall not consider the effect of the capitalization or earnings of any subsidiary which is an EWG or a FUCO upon the registered holding company system if rules 53(a), (b) or (c) are satisfied.

Allegheny does not satisfy the requirements of rule 53(a)(1). The Commission has authorized Allegheny to invest up to $2 billion in EWGs and FUCOs and found that this investment would not have either of the adverse effects set forth in rule 53(c). As of September 30, 2003, Allegheny's ''aggregate investment,'' as defined in rule 53(a)(l), was approximately $185 million. Allegheny is, however, no longer in compliance with the financing conditions of its financing orders. As of September 30, 2003, Allegheny's common equity ratio was below 28 percent. As a result, Allegheny is no longer able to make any investments in EWGs and FUCOs, without further authorization from the Commission.[2]

Allegheny currently complies with, and will comply with, rules 53(a)(2), 53(a)(3), and 53(a)(4). None of the circumstances described in 53(b)(1) have occurred. The circumstances described in rule 53(b)(2) and (b)(3) have occurred. And, the requirements of rule 53(c) are met.

Allegheny believes that the requested authorization will not have a substantial adverse impact upon the financial integrity of Allegheny nor its public utility company subsidiaries (''Operating Companies''). Allegheny maintains that the requested relief will not adversely affect the Operating Companies and their customers. The ratio of common equity to total capitalization of each of the Operating Companies will continue to be maintained at not less than 30 percent.[3] Furthermore, the common equity ratios of the Operating Companies will not be affected by the proposed transactions.

The fees, commissions and expenses incurred or to be incurred in connection with this Declaration will not exceed $10,000. Allegheny maintains that no state or federal regulatory agency, other than the Commission, has jurisdiction over the requested authority.

It is ordered, under rule 62 of the Act, that the Declaration regarding the proposed solicitation of proxies from the holders of outstanding shares of Allegheny common stock become effective immediately, subject to the terms and conditions of rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–6169 Filed 3–18–04; 8:45 am]

BILLING CODE 8010–01–P

[1] On October 14, 2003, Allegheny filed an application in file no. 70–10178 to redeem the rights under its existing stockholder rights agreement.

[2] As of September 30, 2003, Allegheny had a consolidated common equity ratio of 20.9 percent and Allegheny Energy Supply Company LLC had a consolidated common equity ratio of 15.71 percent.

[3] The common equity ratios of the Operating Companies as of September 30, 2003 are as follows: West Penn Power Company: 48 percent; Potomac Edison Company: 48 percent; and Monongahela Power Company: 37 percent.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49414; File No. SR–NYSE–2003–33]

Self-Regulatory Organizations; Order Granting Approval to a Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto by the New York Stock Exchange, Inc., Relating to Exchange Fees for Closed-End Funds

March 12, 2004.

On October 20, 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 NYSE. On November 24, 2003, the NYSE filed Amendment No. 1 to the proposed rule change.[1] The proposed rule change, as amended, was published for comment in the **Federal Register** on December 3, 2003.[2] The Commission received one comment letter on the proposed rule change.[3] On February 20, 2004, the NYSE filed Amendment No. 2 to the proposed rule change.[4] This order approves the proposed rule change, as amended.

I. Description of the Proposed Rule Change

In August 2003, the Exchange reduced the original listing fees applicable to closed-end funds,[5] and in October 2003, the Exchange capped at $75,000 the original listing fees applicable to two or more funds from the same fund family listing at the same time.[6]

The Exchange is now proposing to amend the continuing annual listing fees applicable to closed-end funds by establishing a new continuing fee structure with increased fund family discounts and a new per million share base rate applicable to all closed-end funds.

In establishing a new base rate applicable to all closed-end funds, the Exchange will no longer apply the existing five-tiered continued listing fee structure and, instead, closed-end funds will pay at a rate of $930 per million shares, subject to a minimum annual fee of $25,000. To clarify the applicability of the $25,000 minimum, that amount would actually cover funds with up to 26,881,720 shares outstanding. It is only beyond that size that the multiplication of the per share rate ($930/million) by the shares outstanding would produce a fee in excess of the $25,000 minimum.

The Exchange also proposes to increase and expand the availability of the discounts applicable to fund families with multiple funds listed. As proposed, fund families with between 3 and 14 closed-end funds listed will receive a 5% discount off the calculated continuing annual fee for each fund listed, and those with more than 14 listed closed-end funds will receive a discount of 15%. Currently, fund families with between 5 and 15 closed-end funds listed receive a 5% discount off the calculated continuing annual fee for each fund listed, and those with 16 or more listed closed-end funds receive a discount of 10%.

In a previous filing revising listing fees generally,[7] the Exchange eliminated the fee policy under which shares subject to continuing annual fees for a period of 15 consecutive years became exempt from further fees. At the time, the Exchange noted that it was continuing the 15-year exemption policy for closed-end funds pending further study and revision of the fees charged to closed-end funds generally. Given the new fee structure implemented for closed-end funds under this proposal and the other filings referred to herein, the Exchange has concluded that it is now appropriate to eliminate the 15-year exemption policy for closed-end funds consistent with the amendments made with respect to listed operating companies in December 2002. The Exchange is phasing-in increases in fees for closed-end funds that were previously eligible for the 15-year exemption so that closed-end funds that are affected by the elimination will pay only 50% of increased fees in fiscal year 2004 and 100% in fiscal year 2005 and afterwards.

The impact of the proposed continuing annual fee changes in their entirety on an individual fund will vary depending on a fund's shares outstanding and other circumstances. First of all, the Exchange states that its rule has, and will continue to have, an overall fund family fee cap of $1 million per year. Of the 407 listed closed end funds, the Exchange states that 118 are in fund families covered by the $1 million fee cap. Of the remaining 289 funds, factoring in the net effect of the change to the new per share rate from the existing five-tiered formula, the elimination of the 15-year exemption policy, and the increases in the fund family discounts, the Exchange's analysis (based on the information it currently has on fund shares outstanding) is that 55 funds would experience an increase in continuing annual fees, 150 would experience a decrease, and 84 would experience no net change. Of those that can be expected to experience an increase, the Exchange expects that the average increase would be 15.6% and the median increase 8.2%. The Exchange expects that the maximum increase for any one fund would be 73% (in that case, $44,700). Of the 150 funds the Exchange expects to experience a decrease, the average decrease would be 25.4% and the median decrease would be 28.6%. The maximum decrease for any one fund would be 36% (in that case, $12,000). While some funds would experience an increase in continuing annual fees and others a decrease, the overall impact on the Exchange would be a net decrease in continuing annual fees of approximately $900,000.

II. Summary of Comments

The Commission received one comment letter on the proposal.[8] There were several issues raised by the commenter. First, the commenter[9] observed that as a long-standing fund not part of a large fund complex, the NYSE's proposed rule change would significantly increase the continuing annual fees that the commenter would be required to pay. Although the commenter did not object to the NYSE's increase in the per-million share rate, the commenter observed that eliminating the 15-year exemption policy would increase the continuing annual fee for the commenter by 57%, and further observed that while this was within the range described by the NYSE, it was significantly above the average and median increases projected by the Exchange. The commenter requested a three-year phase in period for the elimination of the 15-year exemption policy in order to cushion the effect of the fee increase.

In response to the commenter's concerns, the Exchange responded that the increase in the commenter's fees were consistent with the Exchange's estimates of the range of fee increases. The Exchange also noted that the elimination of the 15-year exemption policy was consistent with recent changes to the Exchange's fee structure. Although the Exchange considered a three-year phase in period for the elimination of the 15-year exemption policy unnecessary, the Exchange

[1] *See* letter from Darla Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 24, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange clarified the effect of the proposed rule change on the fees payable by closed-end funds, particularly closed-end funds not part of a fund family.

[2] *See* Securities Exchange Act Release No. 48833 (December 3, 2003), 68 FR 67717 (SR–NYSE–2003–33).

[3] *See* Letter to Jonathan G. Katz, Secretary, Commission, from Lawrence J. Hooper, Jr., Vice President, Secretary and General Counsel, The Adams Express Company, dated December 23, 2003 (''Adams Letter'').

[4] Amendment No. 2 replaces the originally filed Form 19b–4 in its entirety. (''Amendment No. 2''). In Amendment No. 2, the Exchange amended its original proposal to include a two-year phase in for the fees resulting from the elimination of the 15-year exclusion.

[5] *See* Securities Exchange Act Release No. 48360 (August 18, 2003), 68 FR 51045 (August 25, 2003) (SR–NYSE–2003–22).

[6] *See* Securities Exchange Act Release No. 48685 (October 23, 2003), 68 FR 61710 (October 29, 2003) (SR–NYSE–2003–32).

[7] *See* Securities Exchange Act Release No. 47115 (December 31, 2002), 68 FR 1495 (January 10, 2003) (SR–NYSE–2002–62).

[8] *See* note 3, *supra*.

[9] *See* Adams Letter.

proposed a two-year phase in period instead. The Exchange's proposal would therefore result in a company's paying 50% of the fee increase during the first year and 100% of the increase in the second year.

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 exchange.[10] In particular, the Commission finds the proposal is consistent with Section 6(b)(4) of the Act[11] that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.[12] The Commission believes that the NYSE's proposal to increase the listing fees applicable to closed-end funds is consistent with the Act because it is consistent with the Exchange's recent revisions to their fees generally and further provides for a net decrease in fees applicable to funds generally.

After careful consideration of the commenter's concerns about the increases in the fees applicable to the commenter, the Commission finds that the NYSE's determination to phase in the increase in fees over a two-year period is responsive to the commenter's observations that its fees would increase significantly as a result of the elimination of the 15-year exemption policy for closed-end funds. The Commission has also carefully considered the commenters' concerns about the fee increase applicable to closed-end funds that are not part of a larger fund family. The Commission finds that although the commenter's fees will increase by 57%, the increase is within the range identified by the Exchange, and that the fee increases for closed-end funds are commensurate with the Exchange's recent amendments to the fees applicable to listed operating companies, consistent with Section 6(b)(4) of the Act.[13]

IV. Amendment No. 2

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after notice of the publication in the **Federal Register**. The Exchange wishes to begin applying the proposed fee changes effective no later than January 1, 2004. The Commission finds that good cause exists to justify accelerated effectiveness to enable the fee change to be imposed no later than at the beginning of the new calendar year. The Commission believes that it is not necessary to separately solicit comment on Amendment 2 prior to approving this proposal because it finds that these changes to the proposed rule language respond to and incorporate suggestions made by the Commission and the commenter to the original proposal. The Commission therefore finds that acceleration of Amendment No. 2 is appropriate.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether the proposed amendments are 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–2003–33. 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 amendments that are filed with the Commission, and all written communications relating to the amendments 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 also will be available for inspection and copying at the principal office of the NASD.

All submissions should refer to File No. SR–NYSE–2003–33 and should be submitted by April 9, 2004.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change and Amendment No. 1 (SR–NYSE–2003–33), is approved, and Amendment No. 2 is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–6189 Filed 3–18–04; 8:45 am]

BILLING CODE 8010–01–P

[10] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78*o*–3(b)(6).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SELECTIVE SERVICE SYSTEM

Forms Submitted to the Office of Management and Budget for Extension of Clearance

AGENCY: Selective Service System.

ACTION: Notice.

The following forms, to be used only in the event that inductions into the Armed Services are resumed, have been submitted to the Office of Management and Budget (OMB) for the extension of clearance in compliance with the Paperwork Reduction Act (44 U.S. Chapter 35):

SSS—254

Title: Application for Voluntary Induction.

Purpose: Is used to apply for voluntary induction into the Armed Services.

Respondents: Registrants or nonregistrants who have attained the age of 17 years, who have not attained the age of 26 years and who have not completed his active duty obligation under the Military Selective Service Act.

Frequency: One-time.

Burden: The reporting burden is twelve minutes or less per individual.

SSS—350

Title: Registrant Travel Reimbursement Request.

Purpose: Is used to request reimbursement for expenses incurred when traveling to or from a Military Entrance Processing Station in compliance with an official order issued by the Selective Service System.

Respondents: All registrants required to travel to or from a Military Entrance Processing Station at their own expense.

Frequency: One-time.

Burden: The reporting burden is ten minutes or less per request.

Copies of the above identified forms can be obtained upon written request to Selective Service System, Reports Clearance Office, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed

extension of clearance of the form(s) should be sent within 60 days of publication of this notice to Selective Service System, Reports Clearance Office, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Dated: March 5, 2004.

Lewis C. Brodsky,

Acting Director.

[FR Doc. 04–6166 Filed 3–18–04; 8:45 am]

BILLING CODE 8015–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 02/72–0610]

Gefus SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Gefus SBIC, L.P., 375 Park Avenue, Suite 2401, New York, NY 10152, a Federal licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730). Gefus SBIC, L.P. proposes to provide equity/debt security financing to Patton Surgical, Inc. The financing is contemplated for operating expenses and for general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the regulations because Admiral Bobby R. Inman, an associate of Gefus SBIC, L.P., owns more than 10 percent of Patton Surgical, Inc.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: February 24, 2004.

Jeffrey Pierson,

Associate Administrator for Investment.

[FR Doc. E4–635 Filed 3–18–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Bureau of Oceans and International Environmental and Scientific Affairs

[Public Notice 4643]

Request for Nominations for the Scientific Advisory Subcommittee of the General Advisory Committee to the United States Section to the Inter-American Tropical Tuna Commission

SUMMARY: The Department of State is seeking applications and nominations for the Scientific Advisory Subcommittee of the General Advisory Committee to the United States Section to the Inter-American Tropical Tuna Commission (IATTC). The purpose of the Scientific Advisory Subcommittee is to provide public input and advice to the United States Section to the IATTC in the formulation of U.S. policy and positions at meetings of the IATTC and its subsidiary bodies. The Scientific Advisory Subcommittee also functions as the National Scientific Advisory Committee (NATSAC) provided for in the Agreement on the International Dolphin Conservation Program (AIDCP). The United States Section to the IATTC is composed of the U.S. Commissioners to the IATTC, appointed by the President, and the Deputy Assistant Secretary of State for Oceans and Fisheries or his or her designated representative. Authority to establish the Scientific Advisory Subcommittee is provided by the Tuna Conventions Act of 1950, as amended by the International Dolphin Conservation Program Act (IDCPA) of 1997.

DATES: Nominations must be submitted on or before September 20, 2004.

ADDRESSES: Nominations should be submitted by September 20, 2004, to David Balton, Deputy Assistant Secretary for Oceans and Fisheries, Bureau of Oceans and International Environmental and Scientific Affairs, Room 7831, Department of State, Washington, DC, 20520–7818; or by fax to 202–736–7350.

FOR FURTHER INFORMATION CONTACT: David Hogan, Office of Marine Conservation, Department of State: 202–647–2335.

SUPPLEMENTARY INFORMATION:

Scientific Advisory Subcommittee

The Tuna Conventions Act (16 U.S.C. 953.4) provides that the Secretary of State, in consultation with the U.S. Commissioners to the IATTC, shall appoint a Scientific Advisory Subcommittee (the Subcommittee) of the General Advisory Committee. The Subcommittee is composed of not fewer than 5 and not more than 15 qualified scientists with balanced representation from the public and private sectors, including non-governmental conservation organizations. The Subcommittee advises the Committee and the U.S. Section on matters including: The conservation of ecosystems; the sustainable uses of living marine resources related to the tuna fishery in the eastern tropical Pacific Ocean; and the long-term conservation and management of stocks of living marine resources in the eastern tropical Pacific Ocean.

In addition, at the request of the Committee, the U.S. Commissioners, or the Secretary of State, the Subcommittee performs such functions and provides such assistance as may be required by formal agreements entered into by the United States for the eastern Pacific tuna fishery, including the AIDCP. The functions may include: The review of data from the International Dolphin Conservation Program (IDCP), including data received from the IATTC staff; recommendations on research needs and the coordination and facilitation of such research; recommendations on scientific reviews and assessments required under the IDCP; recommendations with respect to measures to assure the regular and timely full exchange of data among the Parties to the AIDCP and each nation's NATSAC (or its equivalent); and consulting with other experts as needed. The Subcommittee is invited to have representatives attend all non-executive meetings of the U.S. Section and the General Advisory Committee and is given full opportunity to examine and to be heard on all proposed programs of scientific investigation, scientific reports, and scientific recommendations of the Commission. Representatives of the Subcommittee may attend meetings of the IATTC and the AIDCP as members of the U.S. delegation or otherwise in accordance with the rules of those bodies governing such participation. Participation as a member of the U.S. delegation is subject to such limits as may be placed on the size of the delegation.

National Scientific Advisory Committee

The Subcommittee also functions as the NATSAC established pursuant to Article XI of the AIDCP. In this regard, the Subcommittee performs the functions of the NATSAC as specified in Annex VI of the AIDCP including, but not limited to: Receiving and reviewing relevant data, including data provided to the National Marine Fisheries Service (NMFS) by the IATTC Staff; advising and recommending to the U.S.

government measures and actions that should be undertaken to conserve and manage stocks of living marine resources in the AIDCP Area; making recommendations to the U.S. government regarding research needs related to the eastern Pacific Ocean tuna purse seine fishery; promoting the regular and timely full exchange of data among the Parties on a variety of matters related to the implementation of the AIDCP; and consulting with other experts as necessary order to achieve the objectives of the Agreement.

General Provisions

Each appointed member of the Committee and the Subcommittee/NATSAC is appointed for a term of 3 years and may be reappointed. Logistical and administrative support for the operation of the Subcommittee will be provided by the Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, and by the Department of Commerce, National Marine Fisheries Service. Members receive no compensation for their service on the Subcommittee/NATSAC, nor will members be compensated for travel or other expenses associated with their participation.

Procedures for Submitting Applications/Nominations

Applications/nominations for the Scientific Advisory Subcommittee/NATSAC should be submitted to the Department of State (*see* **ADDRESSES**). Such applications/nominations should include the following information:

(1) Full name/address/phone/fax and e-mail of applicant/nominee;

(2) Applicant/nominee's organization or professional affiliation serving as the basis for the application/nomination;

(3) Background statement describing the applicant/nominee's qualifications and experience, especially as related to the tuna purse seine fishery in the eastern tropical Pacific Ocean or other factors relevant to the implementation of the Convention establishing the IATTC or the AIDCP;

(4) A written statement from the applicant/nominee of intent to participate actively and in good faith in the meetings and activities of the Scientific Advisory Subcommittee/NATSAC. Applicants/nominees who submitted material in response to the **Federal Register** notices published by the U.S. Department of State on November 12, 2002, February 5, 2003, and December 17, 2003, need not resubmit their applications pursuant to this notice.

Margaret F. Hayes,

Acting Deputy Assistant Secretary for Oceans and Fisheries, Department of State.

[FR Doc. 04–6199 Filed 3–18–04; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Order Soliciting Community Proposals

AGENCY: Department of Transportation.

ACTION: Notice of Order Soliciting Community Proposals (Order 2004–3–10) Docket OST–2004–17343

SUMMARY: The Department of Transportation is soliciting proposals from communities or consortia of communities interested in receiving a grant under the Small Community Air Service Development Program. The full text of the Department's order is attached to this document.

DATES: Grant Proposals should be submitted no later than May 14, 2004.

ADDRESSES: Interested parties should submit an original and three copies of their proposals bearing the title ''Proposal under the Small Community Air Service Development Program, Docket OST–2004–17343, as well as the name of the applicant community or consortium of communities, and the legal sponsor, to Dockets Operations and Media Management, M–30, Room PL–401, Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Teresa Bingham, Associate Director, Office of Aviation Analysis for the Small Community Air Service Development Program, 400 7th Street, SW., Washington, DC 20590, (202) 366–1032.

Dated: March 15, 2004.

Michael W. Reynolds,

Deputy Assistant Secretary for Aviation and International Affairs.

BILLING CODE 4910–62–P

Posted 3/15/04
3:00 p.m.

Order 2004-3-10
Served: March 15, 2004

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 15th day of March, 2004

In the Matter of Grant Applications **SMALL COMMUNITY AIR SERVICE DEVELOPMENT PROGRAM** under 49 U.S.C. 41743 *et seq.*	**DOCKET OST-2004-17343**

ORDER SOLICITING COMMUNITY GRANT PROPOSALS

OVERVIEW

By this order, the Department invites proposals from communities and/or consortia of communities interested in obtaining a federal grant under the Small Community Air Service Development Program (Small Community Program) to address air service and airfare problems in their communities. Proposals should be submitted in the above-referenced docket no later than May 14, 2004.

FUNDING OPPORTUNITY

The Small Community Program was established under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), P.L. 106-181, as a three-year "pilot" program designed to provide financial assistance to small communities to help them enhance their air service. The Department provides this assistance in the form of financial grants. The program was not funded in its first year, fiscal year 2001, but was funded and implemented in each of fiscal years 2002 and 2003. The Vision 100-Century of Aviation Reauthorization Act, P.L. 108-176 (Vision 100), reauthorized the program for an additional five years, through fiscal year 2008, and eliminated the "pilot" status of the program.

Under the statute, the Secretary may award a maximum of 40 grants each year that the program is funded, although no more than four grants each year may be to the same state.[1] The grants may be made to single community or to consortia of communities.[2]

Communities that are eligible to participate in the grant program are those communities that are served by an airport that was not larger than a small hub airport for calendar year 1997 and had insufficient air service or unreasonably high airfares.[3] Communities that do not currently have commercial air service are also eligible, but where they seek grant funds to secure air service under the grant program they must have met or be able to meet in a reasonable period all necessary requirements of the Federal Aviation Administration for the type of service involved in their grant proposals.

In selecting communities to participate in the program, the statute directs the Secretary to give priority to those communities where: (a) average air fares are higher than the air fares for all communities; (b) a portion of the cost of the activity contemplated by the community is provided from local, non-airport-revenue sources; (c) a public-private partnership has been or will be established to facilitate air carrier service to the public; (d) improved service will bring the material benefits of scheduled air transportation to a broad section of the traveling public, including businesses, educational institutions, and other enterprises whose access to the National air transportation system is limited; and (e) the assistance will be used in a timely fashion.[4]

The Small Community Program provides considerable flexibility in how funds can be used to implement a community's grant proposal. For example, grant funds can be used to cover the expenses of any new advertising or promotional activities that can reasonably be related to improving the air service to the community. Funds may also be used for new studies designed to measure air service deficiencies, or to measure traffic loss or diversion to other communities, or for the employment or use of new, dedicated air service development staff on a long-term basis, advertising or public relations agencies, universities, and consulting firms. In addition, grant funds may also be used for financial incentives, including subsidy or revenue guarantees, to air carriers in conjunction with their provision of air service or the fare levels charged, or to ground service providers in providing access to air transportation services.[5] The statute limits the use of grant funds for air carrier subsidy to a maximum period of three years. That same limitation applies to revenue guarantees and other forms of ongoing financial support for air carrier operations.

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[1] See Appendix A for the actual text of the authorizing statute, 49 U.S.C. §41743, as amended by Vision 100.

[2] The statute specifies that a consortium of communities should be considered as a single entity; therefore, throughout this order we use "community" to include consortia.

[3] A small hub is defined as a community that has at least 0.05%, but less than 0.25%, of the annual passenger boardings in the United States.

[4] The last criterion was added by the Vision-100 legislation, P.L. 108-176.

[5] Qualified expenses are set forth in 14 CFR 18.22 and Office of Management and Budget Circular A-87. See www.whitehouse.gov/omb/circulars/a0087/a0087.html.

While the statute does not preclude communities from including capital expenditures, such as terminal/runway improvements or airport equipment in their grant requests, communities are encouraged not to do so. The Department generally receives many more applications than it can accommodate under the limitations of the statute. Moreover, there are other government programs more suited and specifically designed for such purposes. Therefore, while not categorically disallowed, the inclusion of capital improvements may put the community at a competitive disadvantage when compared to communities that have not included such items in their grant requests. Applicants may pursue capital improvement projects separately in conjunction with their grant proposals under the Small Community Program.[6]

The statute also provides that the Department will designate one of the grant recipients as an Air Service Development Zone and work closely with the designated community or consortium on means to attract business to the areas surrounding the airport and to develop land use options for the area. In this regard, the Department will also coordinate with the Department of Commerce to provide data to the community/consortium relevant to this objective. There are no additional funds associated with this designation, and no special benefit or preference will be given to communities seeking this designation in receiving a grant under the program. Rather, the Department will serve as a liaison between the community and other government agencies with respect to the community's development plans.

Applicant communities interested in this designation should clearly indicate that interest in their applications and should provide information in support of their selection for this designation in a separate section of their grant proposals. They should also clearly indicate this interest in the appropriate place in the Summary Information Sheet, which is attached as Appendix B to this order.

In each of the two years that the program has been funded, the Department received many more applications than could be accommodated under the limitations of the statute. In fiscal year 2002 the Department received 180 proposals and made 40 grant awards. Similarly, in fiscal year 2003, the Department received 170 applications and made 36 grant awards.[7]

AWARD INFORMATION

The Vision 100 legislation authorizes funding of $35 million for the program in each fiscal year, through 2008. However, the 2004 Consolidated Appropriations Act, P.L 108-199, January 23, 2004, provided funding for the program at a level of $20 million for fiscal year 2004.[8] The funds remain available until expended.

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[6] Each applicant is responsible for assuring that no part of its proposal would, if accepted, violate any of assurances associated with other federal grants.

[7] See Orders 2002-6-14 (June 26, 2002), 2002-12-16 (December 20, 2002) (both in Docket OST-2002-11590), Orders 2003-9-14 (September 17, 2003), and 2003-9-25 (September 30, 2003) (both in Docket OST-2003-15065) for a complete description of the Department's grant awards over the past two years.

[8] This funding is subject to an across-the-board rescission. As a result $19,880,000 will be available for grant awards.

The financial assistance under this program is in the form of financial grants. As mentioned above, the statute limits the Department to a maximum of 40 grant awards in each year that the program is funded. It does not prescribe any limits on the amounts of individual awards. The grant amounts awarded will vary depending upon the features and merits of the proposals selected. Over the past two years, the Department's individual grants have ranged from $85,000 to nearly $1.6 million.

The grant funds awarded do not need to be expended in the fiscal year that they are awarded. Nor do they need to be used within a one-year period. Authorized grant projects may include activities that extend over a multi-year period under a single grant award to the extent reasonable and practicable. Generally speaking, grant awards will not exceed a three-year period.

Grant funds to the selected communities are available on a reimbursable basis under which the community expends funds related to implementation of the approved grant project, and then seeks reimbursement from the Department at regular intervals (usually monthly) for project expenditures. The Department does not provide grant funds in advance to selected communities.

Communities that were awarded grants in previous years that want to apply for a grant this year should be aware that the revisions to the statute by Vision 100 preclude communities from seeking funds for projects that have already received an award under the Small Community Program. However, to the extent that previous grant recipients seek funds for new projects, they are free to submit grant proposals under this year's appropriation. That said, the funds for this program are very limited and the interest in the program has far exceeded both the funds available and the number of communities that can participate under the statute in any one year. The fact that a community has already received one or more grants would be considered carefully in comparing its new proposal with those of other applicant communities.

ELIGIBILITY INFORMATION

Applicant Eligibility

Communities that are eligible to participate in the grant program are those communities that are served by an airport that was not larger than a small hub airport for calendar year 1997 and had insufficient air service or unreasonably high airfares. Communities that do not currently have commercial air service are also eligible, but where they seek grant funds to secure air service under the grant program they must have met or be able to meet in a reasonable period all necessary requirements of the Federal Aviation Administration for the type of service involved in their grant proposals. Medium and large hubs are not eligible to apply under this program.

The law does not exclude small communities that currently receive subsidized air service under the Essential Air Service (EAS) program from seeking funds under the Small Community Program. A number of EAS subsidized communities applied in both of the past two years and the Department made grant awards to some of those applicants. In addition to reauthorization of the Small Community Program, Vision 100 made several substantive changes to the EAS program, including provision for an "alternate" EAS program that provides EAS-subsidized communities many of the same options for addressing their air service issues as those generally

available under this program.[9] In these circumstances, while EAS-subsidized communities remain eligible to apply for grants under the Small Community Program, it is likely that their proposals may not be as competitive as before, relative to non-EAS communities. Proposals from EAS-subsidized communities that would be favorably considered are those directed toward increasing ridership on the subsidized service. Any proposal from an EAS-subsidized community seeking funds for service to a point other than its designated EAS hub would have to be considered very carefully, weighing, and with particular emphasis on, the potential negative effect of such a project on the cost to the government for the already federally subsidized EAS service in place.

In addition, previous grant recipients are eligible to apply for a grant, but only to the extent that they seek funds for projects that have not previously been authorized under an earlier Small Community Program grant. However, given that the Department receives many more applications than it can accommodate under the statute, the fact that a community has already received one or more grants in the past will be a factor considered in our evaluation of the proposals received for this fiscal year.

Cost Sharing/Local Contributions

The statute does not require communities to contribute toward a grant project, although those that do contribute from local sources other than airport revenues are accorded priority consideration as required by the statute. However, a core objective of the Small Community Program is to promote community involvement in addressing air service/air fare issues through public/private partnerships. As a financial stakeholder in the process, the community gains greater control over the type, quality, and success of the air service initiatives that will best meet its needs, and a greater commitment towards achieving the stated goals. The Department has historically received many more applications than can be accommodated and nearly all of those applications have proposed a financial contribution to the project. Thus, proposals that do not propose a financial contribution will be at a competitive disadvantage. While some communities may have greater financial resources than others, there should be a direct relationship between the amount of Federal support that a community seeks and the amount that it is prepared to contribute toward the proposed initiative. As a general rule, the greater the federal grant amount requested, the greater the community's contribution should be.

For those communities that propose to contribute to the grant project, that contribution can be in the following forms:

Cash from non-airport revenues: This cash contribution can include contributions from the State, the County or the local government, and/or from local businesses, or other private organizations in the community. The "value" of donated advertising will not be considered a "cash" contribution.

Cash from Airport Revenues: This includes contributions from funds generated by airport operations.

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[9] P.L. 108-176, Sec. 405 amending 49 U.S.C. section 41745.

In-Kind Contributions from the Airport: This can include such items as waivers of landing fees, terminal rents, fuel fees, and/or parking fees.
In-Kind Contributions from the community: This can include such items as donated advertising from media outlets, catering services for inaugural events, or in-kind trading, such as advertising in exchange for free air travel. Travel commitments/pledges (often referred to as travel banks) are regarded as an in-kind contribution. Similarly, reduced fares by airlines will be considered an in-kind contribution.

Only cash contributions will be eligible for reimbursement. "In-kind" contributions involve services or benefits that do not include a cash transaction between the parties. Since grant funding under the Small Community Program is provided on a reimbursable basis, the Department cannot reimburse the grant sponsor for "in-kind" or non-cash contributions. Therefore, in-kind contributions are not considered as part of the community's cash financial contribution to the project. Of course, communities are free to include in-kind contributions in their proposals. In fact, communities are encouraged to offer in-kind inducements as an extra incentive to facilitate air service/fare improvements. While these contributions will not be considered as part of the community's cash contribution toward the project on which reimbursements are made, they will be considered as illustrative of the community's overall commitment to the proposed grant project. If there is any question about whether a proposed contribution would be considered as "in-kind" or cash, the applicant should contact the Department before submitting its proposal.

Contributions that simply continue already-existing programs or projects (*e.g.,* designating a portion of an airport's existing annual marketing budget to the project) are given less consideration than contributions for new and innovative programs or projects. Ideally, contributions should represent a new financial commitment or new financial resources devoted to attracting new or improved service, or addressing a specific high-fare or other service issues, such as improving patronage of existing services at the airport.

Applicant communities should also note that, as part of the grant agreement between the Department and the community, the community is required to fulfill its proposed financial contribution to the project. Community participation with respect to all aspects of the proposal, including the financial aspects, is critical to the success of the authorized project initiative. As with the grant awards over the past two years, receipt of the full federal contribution awarded will thus be linked to the community's fulfillment of its financial contribution. Furthermore, communities cannot propose a certain level of cash contribution from non-airport sources, and subsequent to being awarded a grant, seek to substitute or replace that contribution with either "in-kind" contributions or contributions from airport revenues, or both. Given the statute's priority for contributions from non-airport sources and the competitive nature of the selection process, a community's grant award could be reduced or terminated altogether if it is unable to replace the committed funds from non-airport revenue sources.

APPLICATION AND SUBMISSION INFORMATION

Types of Projects and Application Content

The statute is very general about the types of projects that can be authorized in order to provide communities as much flexibility as possible to address air service and airfare issues. Moreover, as each community's circumstances may be different, applicants will have some latitude in identifying their own objectives and developing strategies for accomplishing them. However, the purpose of this program is to provide additional financial support to improve air service at small communities. It is not intended to shift existing expenditures for this purpose from the local or state level to the federal level.

A core objective of the Small Community Program is to help communities secure enhancements that will be responsive to their air transportation/air fare needs on a long-term basis after the financial support of the grant has discontinued. There are many ways that a community might enhance its current air service or attract new service, such as: by promoting awareness among residents of locally available service; by attracting a new carrier through revenue guarantees or operating cost offsets; by offering an incumbent carrier financial incentives to lower its fares, increase its frequencies, add new routes, or deploy more suitable aircraft, including upgrading its equipment from turboprops to regional jets; by combining traffic support from surrounding communities with regionalized service through one airport; or by providing local ground transportation service to improve access to air service to the community and the surrounding area. These serve merely as illustrative examples and are not meant to comprise a list of the types of projects that are considered most favorably.

Consequently, communities are encouraged to be innovative and to consider a wide range of initiatives in developing their proposals. At the same time, general, vague, or unsupported proposals will not be entertained. The more highly defined and focused the proposal, the more likely it will receive favorable consideration.

At a minimum, proposals must provide the following information:

- A description of the community's existing air service, including the carrier(s) providing service, service frequency, direct and connecting destinations offered, available fares, and equipment types.

- A synopsis of the community's historical service including destinations, traffic levels, service providers, and any extenuating factors that might have affected traffic in the past or that can be expected to influence service needs in the near to intermediate term.

- An analysis of the community's air service needs or deficiencies, including a comparison of fares currently offered locally with those offered at similar communities in similarly

served markets.[10] Applicants should also identify any major origin/destination markets not now served or not served adequately.

- A strategic plan for meeting those needs under the Small Community Program, including the community's specific project goal(s) and detailed plan for attaining that goal(s). Proposals should clearly identify the target audience of each component of the proposed transportation initiative, including all advertising and promotional efforts. Proposals should also provide a realistic timetable for implementation of the grant project. In this regard, the statute now includes timely use of the grant funds as a priority consideration. Consequently, communities must have a well-developed project plan and detailed timetable for implementing that plan. In establishing the timetable, however, communities should be realistic about their ability to meet their project deadlines.[11] Furthermore, proposals involving new or improved service should include self-sufficiency of the service as an integral part of the community's goal. In this regard, communities need to keep in mind that, under the statute, they cannot seek grant funding in subsequent years in support of the same project. Therefore, it is important that communities seriously consider the scale of their proposed projects in developing their proposals and the timetable for achieving them. To the extent that a proposed project is dependent upon or relevant to completion of other federally funded capital improvement projects, the community should provide a description of, and the construction time-line for, those projects keeping in mind the new statutory requirement to use Small Community Program funding in a timely manner.

- A description of any public-private partnership that will participate in the project. Full community involvement is a key aspect of the Small Community Program. The statute gives a priority to those communities that already have established, or will establish a public-private partnership to facilitate air service to the public. The proposal should give a full description of the public-private partnership that will participate in the community's proposal and how the partnership will work toward implementing the proposed project. In addition, applicants should identify each member of the partnership, the role that each will play, and its specific responsibilities in implementation of the project.

- A detailed description of the funding necessary for implementation of the community's project, including the federal and non-federal contributions. Proposals should clearly identify the level of Federal funding sought. They should also clearly identify the other cash contributions toward the proposed project, "in-kind" contributions from the airport,

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[10] The Department's Bureau of Transportation Statistics has some information on fares and services. To use the information, however, you may need a particular computer program to access the data. Representatives of that office can be reached at (202)-366-4373.

[11] The projected timetable will be an integral part of the grant agreements between the selected communities and the Department. Therefore, there is *no* advantage to a community in proposing an aggressive timetable that cannot be met, and there may be disadvantages if the community finds that it cannot meet its timetable. Communities should carefully consider all factors affecting implementation of their projects and develop realistic timeframes for achieving those objectives.

and "in-kind" contributions from the community. Cash contributions from airport revenues should be identified separately from cash contributions from other community sources. Similarly, cash contributions from the state and/or local government should be separately identified and described.

In this regard, problems have arisen in the past where communities have relied extensively on what they characterize as travel banks as a significant portion of their local contribution. A travel "bank" involves an actual deposit of funds from the participating entities into a bank for the purpose of purchasing committed air travel on the selected airline and defined procedures for use of those funds under an agreement with the airline. Most often, what communities refer to as a travel "bank" in reality involves travel pledges from businesses in the community without any collection of funds or formal procedures for use of the funds. In the two years of the program, despite having awarded several proposals contemplating travel "banks," there has yet to be one travel bank that has been developed. In nearly all instances, community discussions with air carriers have revealed that many carriers are not interested in travel banks or travel pledges/commitments, preferring other forms of financial incentives for risk abatement in the initial stages of their airline service. If communities include travel banks in their proposals, they must also provide written confirmation that the potential transportation provider(s) involved in the project is interested in such a financial incentive. If such confirmation cannot be secured, the community should have alternative funding proposals for other carrier/financial incentive packages that may be needed. Furthermore, the Department will require evidence that travel banks are funded, and will remain available for that stated purpose.

Applicant communities should be aware that, if awarded a grant, the Department will not reimburse the community for pre-award expenses such as the cost of preparing the grant application or for any expenses incurred prior to the community executing a grant agreement with the Department for implementation of the grant. In addition, 10 percent of the grant funds will be withheld until the Department receives the final report of the grant project. See Award Administration Information, below.

- An explanation of how the community will provide assurances that its own funding contribution is spent in the manner proposed.

- Descriptions of how the community will monitor the success of the program and identify critical milestones during the life of the program, including the need to modify, or discontinue funding if identified milestones cannot be met. This is an important component of the community's proposal and serves to demonstrate the thoroughness of the community's planning of the proposed grant project. Applicant communities are on notice that any modifications not contemplated in the grant proposal must first be approved by the Department. Moreover, modifications to the project will be considered only to the extent that the changes do not deviate from the original goal of the authorized grant project. Given the competitive nature of this process, and in fairness to the other applicants that were not selected, the Department is not in a position to permit

fundamental changes to a community's proposal in order to preserve a grant award. For example, if the authorized grant project was to conduct a route feasibility study and the community subsequently sought to use the grant funds to subsidize airline service, that would be considered a fundamental change that could not be approved.

- A description of how the community plans to continue with the project if it is not self-sustaining after the grant award expires. A particular goal of the Small Community Program is to provide long-term, self-sustaining improvements to air service at small communities. Under the Vision 100 amendments to the statute, the community cannot seek further grant funding in support of the same project. It is possible that a new or improved service at a community will be well on its way to becoming self-sustaining, but will have not reached that goal when the grant has expired. Similarly, it is possible that extensive marketing and promotional efforts may be in process, but not completed, at the end of the grant period and will require continued support. Therefore, in developing its proposal, the community should carefully consider and describe its plans for continued financial support for the project after the grant funding is no longer available.

- A description of the community's past air service development efforts over the past five years and the results of those efforts. Many communities have been active on an on-going basis for many years in air service development efforts, while others are just beginning. To the extent that a community has previously engaged in other air service initiatives, including through public/private partnerships, it should describe those efforts and their results in its grant proposal. This should include marketing and promotional efforts of airport services as well as efforts to recruit additional or improved air service and airfare initiatives.

- Designation of a legal sponsor responsible for administering the program. The legal sponsor must be a government entity. If the sponsor is a public-private partnership, a public government member of the organization must be identified as the community's sponsor to accept program reimbursements. In this regard, communities can designate only a single government entity as the legal sponsor, even if a consortium, for example, consists of two or more local government entities. Private organizations cannot be designated as the legal sponsor of a grant under the Small Community Program.[12]

There is no set format that applicants should use in submitting their applications, other than the guidance above concerning issues that must be addressed in community applications. The law provides considerable latitude to communities in developing their proposals and a strict format could serve to stifle innovation. However, given the historic high volume of applications received, applicants are required to submit a Summary Information Sheet (attached as Appendix B to this order) at the beginning of their applications to assist our review of each proposal.

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[12] The community has the responsibility to ensure that the recipient of any funding has the legal authority under State and local laws to carry out all aspects of the grant.

Filing Date/Confidential Material

Proposals are due May 14, 2004.[13] They may be submitted by hand, mail, or express delivery. Proposals postmarked after the due date will not be accepted. The applications will be maintained in a public docket accessible by the general public and other applicants. Interested communities should submit an original and three copies of their proposals, including the Summary Information Sheet if submitting their proposals by mail, hand, or express delivery.[14] The cover page for all applications regardless of the method of submission should bear the title "Proposal Under the Small Community Air Service Development Program," and should include the docket number as shown on the first page of this order, the name of the community or consortium of communities applying, the legal sponsor, and the community's Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number.[15] The application should be sent/delivered to Dockets Operations and Media Management, M-30, Room PL-401, Department of Transportation, 400 7th Street, SW, Washington, DC 20590. Questions regarding the program or the filing of proposals should be directed to Teresa B. Bingham, Associate Director, Office of Aviation Analysis, at (202) 366-1032 or terri.bingham@ost.dot.gov.[16]

A number of communities that filed applications in one or both of the past two years were not awarded grants. Some of these communities may still be interested in pursuing the proposals that

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[13] The original application should be submitted on 8.5" X 11" paper, in dark ink (not green) and without tabs to facilitate inclusion in the Department's docket management system. The remaining copies may be tabbed and include use of any color ink.

[14] Communities may submit their proposals electronically by following the instructions at the following website http://dms.dot.gov. If they do so, however, they should not also submit a hard copy of the application to the Dockets Operations and Media Management Office. Moreover, any additional materials such as DVDs and videos cannot be included in the docket management system. To the extent that communities want to include such information in their proposals, they should provide a separate, hard copy of their complete application to the Department's Office of Aviation Analysis, X-50, Room 6401. Questions about electronic filing procedures should be addressed to Ms. Andrea Jenkins, Program Manager, Dockets Operations and Media Management at (202) 366-0271.

[15] The Office of Management and Budget (OMB) issued a new policy with respect to applications for federal grants. Effective October 1, 2003, applicants for federal grants must include in their applications their DUNS number. There are two ways to obtain a DUNS number. Institutions can use the special toll-free number for federal grant applicants at 1-866-705-5711. The process will take about ten minutes and the institution will receive a DUNS number within a few business days. When applying the institution needs to indicate that it is filing an application under a federal grant program and needs to register for a DUNS number. In addition, the institution will need to provide the following information: the name of the institution, address, telephone number, name of the head of the institution, type of institution (university, library, government entity etc), and total number of employees (full- and part-time). Alternatively, the institution can register for a DUNS number via Dun & Bradstreet's website at https://eupdate.dnb.com/requestoptions.html. Choose the "DUNS number only" option. OMB has adopted the use of DUNS numbers as a way to keep track of how federal grant money is dispersed. Notice of this policy was published in the Federal Register on June 27, 2003 [FR38402].

[16] To the extent that applicants are interested in reviewing proposals that were submitted in prior years, those applications are publicly available in Docket OST-2002-11590 and Docket OST-2003-15065 for FY 2002 and 2003 grants, respectively, through the Department's docket management system at the following web address: http://dms.dot.gov/.

they submitted previously with or without any modifications. Others may want to change their proposals, but make no changes to the historical or other information that was provided in either their fiscal year 2002 or 2003 proposals. Communities that are interested in doing so may adopt their applications by reference to the extent that the information in that application remains relevant. However, they should submit in this docket, by May 14, any necessary amendments and/or updates to their previous applications and include the additional information that is required in this order, including an updated copy of the required Summary Information Sheet.

Applicants will be able to provide certain information relevant to their proposals on a confidential basis. Under the Department's regulations, such information is limited to commercial or financial information that, if disclosed, would either significantly harm the competitive position of a business or enterprise or make it more difficult for the Federal Government to obtain similar information in the future. Applicants seeking confidential treatment of a portion of their applications must segregate the confidential material in a sealed envelope marked "Confidential Submission of X (the applicant) in Docket OST-2004-17343" and include with that material a request in the form of a motion seeking confidential treatment of the material under 14 CFR 302.12 (Rule 12) of the Department's regulations. The applicant should submit an original and three copies of this material in the sealed envelope. The confidential material should not be included in the original or in any of the copies of the applicant's proposal that are submitted to the Department. Those submissions, however, should indicate clearly where the confidential material would have been inserted. If applicants invoke Rule 12, the confidential portion of the filing will be treated as confidential pending a final determination. All confidential material must also be received by May 14, 2004.

APPLICATION REVIEW INFORMATION

The Department will carefully review each proposal and the staff may contact applicants and discuss their proposals with them if clarification or more information is needed. Communities may amend their proposals at any time prior to the Department's selection of grant recipients and those amendments will be considered to the extent the review process permits. The grant awards will be made as quickly as possible so that communities awarded grants can complete the grant agreement process and proceed to implement their plans. Pending unforeseen circumstances, this process should be completed before September 30, the end of the fiscal year.

The Small Community Program is a valuable opportunity for communities to gain assistance in securing long-term, self-sustaining improvements in their air service. It is not intended to address short-term anomalies affecting a community's air service. Nor is it intended as a continuing financial support program for small community service.[17] It does represent an important opportunity for the community as a whole to take a creative approach to addressing its service and fare issues and to partner with the federal government to make meaningful and lasting improvements in its air service.

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[17] See 49 U.S.C. §41743(d)(1) which limits the use of grant funds to no longer than three years to support an air carrier's operations, and §41743(c)(4) which precludes communities from seeking additional financial assistance for the same project.

The statute directs the Department to give priority consideration to those communities or consortia where air fares are higher than the average air fares for all communities; the community or consortium will provide a portion of the cost of the activity from local sources other than airport revenues; the community or consortium has established or will establish a public-private partnership to facilitate air carrier service to the public; the assistance will provide material benefits to a broad segment of the traveling public whose access to the national air transportation system is limited; and the assistance will be used in a timely fashion.

Applications will be evaluated against these priority considerations. Given previous experience, it is likely that more applications will be received than can be funded under the limitations of the Small Community Program. With this in mind, consistent with the criteria stated above, the selection process will take into consideration the relative size of each applicant community; the geographic location of each applicant, including the community's proximity to larger centers of air service and low-fare service alternatives; the number of passengers expected to benefit from the proposed transportation initiative; the community's demonstrated commitment to and participation in the proposed grant project; the grant amount requested compared with total funds available for all communities; the proposed federal grant amount requested compared with the local share offered; whether the community has demonstrated a reasonable plan to use the funds in a timely manner; the uniqueness of applicants' claimed problem(s); the uniqueness of the applicant's proposed solution(s) to solving the problem(s); and the relative ability of the applicant to implement its proposed project and resolve or address the claimed problem(s). Finally, we will consider whether the applicant community has previously received a grant award under this program.

Full community participation is a key goal of this program as demonstrated by the statute's focus on local contributions and active participation in the project. Therefore, applications that demonstrate broad community support will be given additional credit. For example, communities providing higher levels of cash contributions will be accorded additional favorable points. Communities that provide multiple levels of contributions—cash and in-kind contributions will receive additional credit. Similarly, communities that demonstrate historic as well as active participation in the proposed air service project will be accorded additional credit.

Favorable consideration will also be given to those proposals that offer innovative solutions to the transportation issues facing the community. Small communities have faced many problems retaining and enhancing their air services and in dealing with their airfare issues. Therefore, proposals that offer new, creative approaches to addressing these problems to the extent that they are reasonable, will be given additional favorable consideration. Proposals that provide a well-defined plan and a reasonable timetable for use of the grant funds and a plan for continuation and/or monitoring of the project after the grant period are concluded will also receive greater consideration.

Less favorable consideration will be accorded contributions that simply continue already-existing programs or projects (*e.g.*, designating a portion of an airport's existing annual marketing budget to the project). Contributions should represent a new financial commitment or new financial

resources devoted to attracting new or improved service, or addressing a specific high-fare or other service issues, such as improving patronage of existing services at the airport.

As a general matter, given prior experience, proposals that include travel banks, particularly if they serve as the community's primary financial contribution to the project will be considered with greater scrutiny. As noted earlier, there is concern that travel banks frequently do not come to fruition and ultimately have not been supported by the carriers. For the most part, travel banks have involved "pledges" from the community to use the air service, rather than cash available for implementation of the project. Therefore, any proposals that include travel banks should also provide evidence of their acceptance to the selected or potential air or ground service providers. Moreover, the community should provide an alternative financial plan for the project in the event that the travel bank ultimately proves to be unacceptable.

An important objective of the Small Community Program is to find solutions to transportation problems of small communities that could serve as models for other small communities to improve their access to air service and to the nation's air transportation system. Therefore, subject to the quality of the proposals submitted in meeting the evaluation criteria and the funding/overall community participation constraints of the program, to the extent possible, our goals will be to select proposals that will (a) benefit communities in all areas of the United States and its territories; (b) benefit small communities of all sizes, ranging from very small to those that qualify as small hubs and eligible for participation in the program under the statute; (c) promote regional solutions to air service issues, where appropriate; (d) include a variety of different type projects; and (e) address different types of air service/airfare issues.

Given the competitive nature of the grant process, the Department does not intend to meet with grant applicants with respect to their grant proposals. The Department's selection of communities for grant awards will be based on the community's written submissions to the Department.

AWARD ADMINISTRATION INFORMATION

The Department will announce its grant selections by Order, which will be served on each grant recipient, all other applicants, and all parties served with this order. It will also be published in the Federal Register and posted on the Department's webpage.

Communities awarded grants will be expected to execute a grant agreement with the Department <u>before</u> they begin to spend funds under the grant award. Grant funds will be provided on a <u>reimbursable basis</u> only and only for expenses incurred and billed during the period that the grant agreement is in effect. Applicants therefore should not assume they have received a grant, nor obligate or spend local funds prior to receiving and fully executing a grant agreement with the Department under this program. Expenditures made prior to the execution of a grant agreement, including costs associated with preparation of the grant application, will <u>not</u> be reimbursed. Moreover, there are numerous assurances that are required to be made and honored when federal funds are awarded (such as, non-discrimination, etc.). All communities receiving a grant under

the Small Community Program will be required to accept the responsibilities of these assurances, which are attached as Appendix C to this order.

The grant agreements between the Department and the selected communities will require quarterly reports on the progress of implementation of the grant project, as well as the submission on a quarterly or on-time basis of additional material relevant to the grant project, such as copies of advertising and promotional material, and copies of contracts with consultants and service providers. In addition, communities will be required to submit a final report to the Department with respect to their grant projects and 10 percent of the grant funds available will not be reimbursed to the community until the final report has been received. Communities will be permitted to seek reimbursement of project implementation costs on a regular basis. The frequency of such requests will be established in the grant agreement, which will be tailored to the specific features of the community's grant project. In most cases, reimbursements will be made on a monthly basis. In this regard, the Department will provide the grant recipient communities with details and procedures for securing reimbursements electronically.

This order is issued under authority delegated in 49 CFR 1.56a(f).

ACCORDINGLY,

1. Community proposals for funding under the Small Community Air Service Development Program should be submitted in Docket OST 2004-17343 no later than May 14, 2004;[18] and

2. This order will be published in the Federal Register and also will be served on the Council of Mayors, the National League of Cities, the National Governors Association, the National Association of State Aviation Officials (NASAO), the Association of County Executives, the American Association of Airport Executives (AAAE), and the Airports Council International-North America (ACI).

By:

KARAN K. BHATIA
Assistant Secretary for Aviation
and International Affairs

(SEAL)

An electronic version of this document is available on the World Wide Web at http://dms.dot.gov

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[18] Proposals must be postmarked no later than May 14. The original application should be submitted on 8.5" X 11" paper, in dark ink (not green) and without tabs to facilitate inclusion in the Department's docket management system. The remaining copies may be tabbed and include use of any color ink.

49 U.S.C. 41743

§ 41743. Airports not receiving sufficient service

(a) Small community air service development program.--The Secretary of Transportation shall establish a program that meets the requirements of this section for improving air carrier service to airports not receiving sufficient air carrier service.

(b) Application required.--In order to participate in the program established under subsection (a), a community or consortium of communities shall submit an application to the Secretary in such form, at such time, and containing such information as the Secretary may require, including--

(1) an assessment of the need of the community or consortium for access, or improved access, to the national air transportation system; and

(2) an analysis of the application of the criteria in subsection (c) to that community or consortium.

(c) Criteria for participation.--In selecting communities, or consortia of communities, for participation in the program established under subsection (a), the Secretary shall apply the following criteria:

(1) Size.--For calendar year 1997, the airport serving the community or consortium was not larger than a small hub airport, and--

(A) had insufficient air carrier service; or

(B) had unreasonably high air fares.

(2) Characteristics.--The airport presents characteristics, such as geographic diversity or unique circumstances, that will demonstrate the need for, and feasibility of, the program established under subsection (a).

(3) State limit.--Not more than 4 communities or consortia of communities, or a combination thereof, from the same State may be selected to participate in the program in any fiscal year.

(4) Overall limit.--No more than 40 communities or consortia of communities, or a combination thereof, may be selected to participate in the program in each year for which funds are appropriated for the program.

No community, consortia of communities, nor combination thereof may participate in the program in support of the same project more than once, but any community, consortia of communities, or combination thereof may apply, subsequent to such participation, to participate in the program in support of a different project.

(5) Priorities.--The Secretary shall give priority to communities or consortia of communities where--

(A) air fares are higher than the average air fares for all communities;

(B) the community or consortium will provide a portion of the cost of the activity to be assisted under the program from local sources other than airport revenues;

(C) the community or consortium has established, or will establish, a public-private partnership to facilitate air carrier service to the public;

(D) the assistance will provide material benefits to a broad segment of the travelling public, including business, educational institutions, and other enterprises, whose access to the national air transportation system is limited; and

(E) the assistance will be used in a timely fashion.

(d) Types of assistance.--The Secretary may use amounts made available under this section--

(1) to provide assistance to an air carrier to subsidize service to and from an underserved airport for a period not to exceed 3 years;

(2) to provide assistance to an underserved airport to obtain service to and from the underserved airport; and

(3) to provide assistance to an underserved airport to implement such other measures as the Secretary, in consultation with such airport, considers appropriate to improve air service both in terms of the cost of such service to consumers and the availability of such service, including improving air service through marketing and promotion of air service and enhanced utilization of airport facilities.

(e) Authority to make agreements.--

(1) In general.--The Secretary may make agreements to provide assistance under this section.

(2) Authorization of appropriations.--There is authorized to be appropriated to the Secretary $20,000,000 for fiscal year 2001, $27,500,000 for each of fiscal years 2002 and 2003, and $35,000,000 for each of fiscal years 2004 through 2008 to carry out this section. Such sums shall remain available until expended.

(f) Additional action.--Under the program established under subsection (a), the Secretary shall work with air carriers providing service to participating communities and major air carriers (as defined in section 41716(a)(2)) serving large hub airports to facilitate joint-fare arrangements consistent with normal industry practice.

(g) Designation of responsible official.--The Secretary shall designate an employee of the Department of Transportation--

(1) to function as a facilitator between small communities and air carriers;

(2) to carry out this section;

(3) to ensure that the Bureau of Transportation Statistics collects data on passenger information to assess the service needs of small communities;

(4) to work with and coordinate efforts with other Federal, State, and local agencies to increase the viability of service to small communities and the creation of aviation development zones; and

(5) to provide policy recommendations to the Secretary and Congress that will ensure that small communities have access to quality, affordable air transportation services.

(h) Air Service Development Zone.--The Secretary shall designate an airport in the program as an Air Service Development Zone and work with the community or consortium on means to attract business to the area surrounding the airport, to develop land use options for the area, and provide data, working with the Department of Commerce and other agencies.

SMALL COMMUNITY AIR SERVICE DEVELOPMENT PROGRAM
DOCKET OST-2004-17343

SUMMARY INFORMATION

All applicants must submit this information along with their proposal. Previous applicants may incorporate by reference all or any portion of their initial proposals in Docket OST-2004-17343, but must also submit this summary information to be considered for a grant award from the FY 2004 funding for the Small Community Program in this docket. Additionally, the Office of Management and Budget (OMB) issued a new policy with respect to applications for federal grants. Effective October 1, 2003, applicants for federal grants must include in their applications their DUNS number.

DUNS Number _____

A. APPLICANT INFORMATION: (CHECK ALL THAT APPLY)

☐ **Not a Consortium** ☐ **Interstate Consortium** ☐ **Intrastate Consortium**
☐ **Community now receives EAS subsidy**

Point of Contact:

Community Name _____ Phone: _____
Address1 _____ Fax: _____
Address2 _____ Email: _____
City, State Zipcode _____ County: _____
Point of Contact: _____

Community Name _____ Phone: _____
Address1 _____ Fax: _____
Address2 _____ Email: _____
City, State Zipcode _____ County: _____
Point of Contact: _____

Community Name _____ Phone: _____
Address1 _____ Fax: _____
Address2 _____ Email: _____
City, State Zipcode _____ County: _____
Point of Contact: _____

DESIGNATED LEGAL SPONSOR: (MUST BE A GOVERNMENT ENTITY)

Point of Contact

Name _____ Phone: _____
Title _____ Fax: _____
Organization _____ Email: _____
Address1 _____ City: _____
Address2 _____ State: _____
Zip: _____

PUBLIC/PRIVATE PARTNERSHIPS: (LIST ORGANIZATION NAMES)

Public	Private
1.	1.
2.	2.
3.	3.
4.	4.
5.	5.

B. PROJECT INFORMATION

PROJECT PROPOSAL: (CHECK ALL THAT APPLY)

- ☐ Marketing
- ☐ Personnel
- ☐ Travel Bank
- ☐ Subsidy
- ☐ Revenue Guarantee
- ☐ Start Up Cost Offset
- ☐ Study
- ☐ Upgrade Aircraft
- ☐ Increase Frequency
- ☐ Service Restoration
- ☐ Regional Service
- ☐ Launch New Carrier
- ☐ First Competitive Service
- ☐ Secure Additional Carrier
- ☐ New Route
- ☐ Low Fare Service
- ☐ Surface Transportation
- ☐ Other (specify)

_____
_____
_____
_____
_____

PROJECT GOAL: PROJECT IS INTENDED TO ADDRESS PROBLEMS INVOLVING (CHECK ALL THAT APPLY)

- ☐ High Fares
- ☐ Insufficient Air Service
- ☐ Unique Airport Circumstance
- ☐ Access to National Transportation System Needed
- ☐ Other (specify)

PLEASE PROVIDE A BRIEF SYNOPSIS (IN ONE PARAGRAPH) OF THE HIGHLIGHTS OF YOUR PROPOSAL.

_____
_____
_____
_____
_____
_____
_____
_____
_____

PROJECT COST:

Federal amount requested: _____
Total local cash financial contribution: _____
Airport funds: _____
Non-Airport funds: _____
State cash financial contribution: _____
Existing funds: _____
New funds: _____
Airport In-kind contribution: _____
(amount & description)
Other In-Kind contribution: _____
(amount & description)
Total cost of project: _____

C. AIR SERVICE DEVELOPMENT ZONE: (CHECK BOX IF INTERESTED IN DESIGNATION) ☐

D. LOCAL AIRPORT INFORMATION: (WHERE SERVICE WOULD BE PROVIDED)

Airport Name: _____
Airport City: _____
Airport State: _____
Airport Code: _____

LOCAL AIRPORT CLASSIFICATION: (BASED ON MOST RECENT FAA ENPLANEMENT DATA)

☐ Non Hub ☐ Small Hub ☐ Medium Hub ☐ Other

EXISTING LANDING AIDS AT LOCAL AIRPORT:

☐ Full ILS ☐ Outer/Middle Marker ☐ Published Instrument Approach

☐ Localizer ☐ Other (specify)

EXISTING SERVICE: (CHECK ALL THAT APPLY)

☐ Jet service ☐ Low Fare Service ☐ Turboprop ☐ No Existing Service

AIR CARRIER(S) SERVING AIRPORT:

Air Carriers	Air Carriers
1.	6.
2.	7.
3.	8.
4.	9.
5.	10.

CURRENT FLIGHT INFORMATION: (PLEASE PROVIDE ATTACHMENT IF YOU NEED MORE ROOM)

Number of non-stop roundtrip flights per destination: _____

Number of one-stop, single-plane roundtrip flights per destination per week (identify services that are seasonal and dates of service): _____

Aircraft Type (include number of seats): _____

ENPLANEMENTS (LAST FIVE CALENDAR YEARS TO THE EXTENT APPLICABLE)

1999 _____ 2002 _____

2000 _____ 2003 _____

2001 _____

E. AIRFARES: (PROVIDE CURRENT AVAILABLE AIRFARES FOR TOP 3 O&D MARKETS-IF APPLICABLE)

O&D Market: _____ Airfare: _____

O&D Market: _____ Airfare: _____

O&D Market: _____ Airfare: _____

F. PROXIMITY OF OTHER AIRPORTS: (BASED ON MOST RECENT FAA ENPLANEMENT DATA)

What is your closest:

Non-hub (w/jet service)	Name _____
Small Hub	Name _____
Medium Hub	Name _____
Large Hub	Name _____
Low-fare service	Name _____

APPENDIX C

OFFICE OF THE SECRETARY

DEPARTMENT OF TRANSPORTATION

TITLE VI ASSURANCE
(Implementing Title VI of the Civil Rights Act of 1964, as amended)

ASSURANCE CONCERNING NONDISCRIMINATION ON THE BASIS OF DISABILITY IN FEDERALLY-ASSISTED PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

(Implementing the Rehabilitation Act of 1973, as amended, and the Air Carrier Access Act of 1986)

49 CFR Parts 21 and 27 and 14 CFR Parts 271 and 382

_____ (the Grant Recipient) HEREBY AGREES THAT,
(Name of Grant Recipient)

I. As a condition to receiving any Federal financial assistance from the Department of Transportation, it will comply: with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d--42 U.S.C. 2000d-4; all requirements imposed by or pursuant to: Title 49, Code of Federal Regulations, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964; and other pertinent directives so that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient receives Federal financial assistance from the Department of Transportation. This assurance is required by Title 49, Code of Federal Regulations, section 21.7(a) and Title 14, Code of Federal Regulations, section 271.9(c).

II. As a condition to receiving any Federal financial assistance from the Department of Transportation, it will comply with: section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); the Air Carrier Access Act of 1986 (49 U.S.C. 1374(c)); and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Part 27, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, Title 14, Code of Federal Regulations, Part 382, Nondiscrimination on the Basis of Handicap in Air Travel; and other pertinent directives so that no otherwise qualified person with a disability, be excluded from participation in, be denied the benefits of, be discriminated against by reason of such handicap in the provision of air transportation, or otherwise be subjected to discrimination under any program for which the Recipient receives Federal financial assistance

APPENDIX C

from the Department of Transportation. This assurance is required by Title 49, Code of Federal Regulations, section 27.9 and Title 14, Code of Federal Regulations, sections 271.9(c) and 382.9.

III. It will promptly take any measures necessary to effectuate this agreement. The Recipient further agrees that it shall take reasonable actions to guarantee that it, its contractors and subcontractors subject to the Department of Transportation regulations cited above, transferees, and successors in interest will comply with all requirements imposed or pursuant to the statutes and Department of Transportation regulations cited above, other pertinent directives, and the above assurances.

IV. These assurances obligate the Recipient for the period during which Federal financial assistance is extended. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the statutes and Department of Transportation regulations cited above, other pertinent directives, and the above assurances.

V. These assurances are given for the purpose of obtaining Federal grant assistance under the Small Community Air Service Development Pilot Program and are binding on the Recipient, contractors, subcontractors, transferees, successors in interest, and all other participants receiving Federal grant assistance in the Small Community Air Service Development Pilot Program. The person or persons whose signatures appear below are authorized to sign this agreement on behalf of the Grant Recipient.

VI. In addition to these assurances, the Recipient agrees to file: a summary of all complaints filed against it within the past year that allege violation(s) by the Recipient of Title VI of the Civil Rights Act of 1964, as amended, section 504 of the Rehabilitation Act of 1973, as amended, or the Air Carrier Access Act of 1986; or a statement that there have been no complaints filed against it. The summary should include the date the complaint was filed, the nature of the complaint, the status or outcome of the complaint (*i.e.*, whether it is still pending or how it was resolved).

_____ _____

Date Legal Name of Grant Recipient

By: _____

Signature of Authorized Official

APPENDIX C

UNITED STATES OF AMERICA

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
OFFICE OF AVIATION ANALYSIS

CERTIFICATION REGARDING INFLUENCING ACTIVITIES

Certification for Contracts, Grants, Loans,
and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:
(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Influencing Activities," in accordance with its instructions.
(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____ _____
Signature Date

_____
Title

_____
Grant Recipient

APPENDIX C

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
OFFICE OF AVIATION ANALYSIS

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS IN THE PERFORMANCE OF SMALL COMMUNITY AIR SERVICE PURSUANT TO GRANT AWARD UNDER THE SMALL COMMUNITY AIR SERVICE DEVELOPMENT PILOT PROGRAM

A. The grant recipient certifies that it will, or will continue, to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grant recipient's workplace, and specifying the actions that will be taken against employees for violation of such prohibition;
(b) Establishing an ongoing drug-free awareness program to inform employees about--
(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
(c) Making it a requirement that each employee to be engaged in the performance of work supported by the grant award be given a copy of the statement required by paragraph (a);
(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment supported by the grant award, the employee will--
(1) Abide by the terms of the statement; and
(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of conviction. Employers of convicted employees must provide notice, including position title, to the Office of Aviation Analysis. Notice shall include the order number of the grant award;
(f) Taking one of the following actions, within 30 days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted--
(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;
(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grant recipient *may*, but is not required to, insert in the space provided below the site for the performance of work done in connection with the specific grant.

Places of Performance (street address, city, county, state, zip code). For the provision of air service pursuant to the grant award, workplaces include outstations, maintenance sites, headquarters office locations, training sites and any other worksites where work is performed that is supported by the grant award.

Check [ ] if there are workplaces on file that are not identified here.

_____ _____
Grant Recipient Signature Date

APPENDIX C

SMALL COMMUNITY AIR SERVICE DEVELOPMENT PROGRAM

GRANT ASSURANCES

Certification. The Grantee hereby assures and certifies, with respect to this grant, that:

1. General Federal Requirements. It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

Federal Legislation

a. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.
b. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq. Airport Assurances (9/99)
c. Hatch Act - 5 U.S.C. 1501, et seq.
d. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.
e. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).
f. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.
g. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
h. Clean Air Act, P.L. 90-148, as amended.
i. Coastal Zone Management Act, P.L. 93-205, as amended.
j. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.1
k. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
l. American Indian Religious Freedom Act, P.L. 95-341, as amended.
m. Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.
n. Power Plant and Industrial Fuel Use Act of 1978 - Section 403 - 42 U.S.C.8373.
o. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.
p. Copeland Anti-kickback Act - 18 U.S.C. 874.
q. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.
r. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
s. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.

Executive Orders

Executive Order 11246 - Equal Employment Opportunity
Executive Order 11990 - Protection of Wetlands
Executive Order 11998 – Flood Plain Management
Executive Order 12372 - Intergovernmental Review of Federal Programs.
Executive Order 12898 - Environmental Justice

Federal Regulations

a. 14 CFR Part 13 - Investigative and Enforcement Procedures.
b. 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
c. 29 CFR Part 1 - Procedures for predetermination of wage rates.
d. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.
e. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and as-

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sisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).
f. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).
g. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.
h. 49 CFR Part 23 - Participation by Disadvantaged Business Enterprise in Airport Concessions.
i. 49 CFR Part 24 - Uniform relocation assistance and real property acquisition for Federal and federally assisted programs.
j. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
k. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.

Office of Management and Budget Circulars

a. A-87 - Cost Principles Applicable to Grants and Contracts with State and Local Governments.
b. A-133 - Audits of States, Local Governments, and Non-Profit Organizations

Specific assurances required to be included in grant agreements by any of the above laws, regulations, or circulars are incorporated by reference in the grant agreement.

2. Responsibility and Authority of the Grantee.

a. It has legal authority to apply for the grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

3. Fund Availability. It has sufficient funds available for that portion of the project costs that are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under the grant agreement that it will own or control.

4. Preserving Rights and Powers.

a. It will not take or permit any action that would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the DOT, and will act promptly to acquire, extinguish, or modify any outstanding rights or claims of right of others that would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the DOT.

5. Accounting System, Audit, and Record Keeping Requirements.

a. It shall keep all project accounts and records that fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
b. It shall make available to the DOT and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers,

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and records of the recipient that are pertinent to the grant. The DOT may require that a recipient conduct an appropriate audit. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

6. Minimum Wage Rates. It shall include, in all contracts in excess of $2,000 for work on any projects funded under this grant agreement that involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

7. Economic Nondiscrimination. In any agreement, contract, lease, or other arrangement under any project funded under this grant agreement and for which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the Grantee will insert and enforce provisions requiring the contractor to (1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and (2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

8. Engineering and Design Services. It will award each contract or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the Grantee.

9. Foreign Market Restrictions. It will not allow funds provided under this grant to be used to fund any project that uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

10. Relocation and Real Property Acquisition. (1) It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B. (2) It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24. (3) It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

_____

Grant Recipient

_____ _____

Signature of Authorized Grant Recipient Official Date

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OFFICE OF THE SECRETARY OF TRANSPORTATION

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and

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frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters -- Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name	Affiliation
Title	Date

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OFFICE OF THE SECRETARY OF TRANSPORTATION CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION -- LOWER TIER COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals.

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Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion -- Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

_____

Name

_____

Title

_____

Affiliation

_____

Date

[FR Doc. 04–6235 Filed 3–18–04; 8:45 am]
BILLING CODE 4910–62–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 23–16A, Powerplant Guide for Certification of Part 23 Airplanes and Airships

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 23–16A, Powerplant Guide for Certification of Part 23 Airplanes and Airships. The intent of this AC is to standardize certification of powerplant installations in normal, utility, acrobatic, and commuter category airplanes and airships. It consolidates existing policy and certain other advisory circulars published prior to December 31, 2002, into a single document. The AC notes the guidance considered acceptable as a means of compliance with the Airship Design Criteria (ADC) requirements in document FAA–P–8110–2. The material in the advisory circular is intended as a reference for airplane and airship manufacturers, modifiers, and FAA engineers. The AC cancels AC 23–16.

DATES: Advisory Circular 23–16A was issued by the Manager of the Small Airplane Directorate on February 23, 2004.

How to Obtain Copies: A paper copy of AC 23–16A may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC–121.23, Ardmore East Business Center, 3341Q 75th Avenue, Landover, MD 20785, telephone 301–322–4779, or by faxing your request to the warehouse at 301–386–5394. The AC will also be available on the Internet at *http://www.faa.gov/certification/aircraft/.*

Issued in Kansas City, Missouri, on February 26, 2004.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–6147 Filed 3–18–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 23–15A, Small Airplane Certification Compliance Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 23–15A. The AC provides a compilation of historically acceptable means of compliance to specifically selected sections of 14 CFR part 23 for small, simple, low performance airplanes. This revision adds a definition of small, simple, low performance airplanes, and clarifies the applicability of the AC. Additionally, information was updated and clarified in numerous sections. Some of the sections that had significant changes are:

- Emergency landing dynamic conditions.
- Flutter.
- Proof of strength.
- Fire protection of flight controls and engine mounts.
- Lightning protection.
- Figures recreated to improve legibility.

DATES: Advisory Circular 23–15A was issued by the Manager of the Small Airplane Directorate on December 30, 2003.

How to Obtain Copies: A paper copy of AC 23–15A may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC–121.23, Ardmore East Business Center, 3341Q 75th Avenue, Landover, MD 20785, telephone 301–322–5377, or by faxing your request to the warehouse at 301–386–5394. The AC will also be available on the Internet at *http://www.faa.gov/certification/aircraft/.*

Issued in Kansas City, Missouri, on January 13, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–6148 Filed 3–18–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 20–65A, U.S. Airworthiness Certificates and Authorizations for Operation of Domestic and Foreign Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) 20–65A, U.S. Airworthiness Certificates and Authorizations for Operation of Domestic and Foreign Aircraft, for review and comment. The proposed AC is written in plain language in an effort to keep this guidance simple and easy to understand. This AC was also updated to the current requirements, references, and FAA offices.

DATES: Comments submitted must identify the proposed AC 20–65A and be received by May 11, 2004.

ADDRESSES: Copies of the proposed AC 20–65A can be obtained from and comments may be returned to the following: Federal Aviation Administration, Production and Airworthiness Division, AIR–200, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Estella James, Airworthiness Certification Branch, AIR–220, Production and Airworthiness Division, Room 815, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–8361.

SUPPLEMENTARY INFORMATION:

Background

The proposed AC 20–65A provides information and guidance on the issuance of airworthiness certificates for U.S.-registered aircraft, and the issuance of special flight authorization for operation in the United States of foreign aircraft not having standard airworthiness certificated issued by the country of registry. You will find that the FAA office's website is still under development, but will be in the final AC.

Interested persons are invited to comment on the proposed AC 20–65A listed in this notice by submitting such written data, views, or arguments as they desire to the aforementioned specified address. All comments received on or before the closing date for comments specified above will be considered by the Director, Aircraft Certification Service, before issuing the final AC.

Comments received on the proposed AC 20–65A may be examined before and after the comment closing date in Room 815, FAA headquarters building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

Issued in Washington, DC on March 11, 2004.

Frank P. Paskiewicz,

Manager, Production and Airworthiness Division, AIR–200.

[FR Doc. 04–6155 Filed 3–18–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Revision Number 1 to Approved Noise Compatibility Program and Request for Review for Bob Hope Airport, Burbank, CA

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed first revision to the approved noise compatibility program that was submitted for Bob Hope Airport (formerly known as the Burbank-Glendale-Pasadena Airport) under the provisions of 49 U.S.C. 47501 *et seq.* (the Aviation Safety and Noise Abatement Act, hereinafter referred to as the ''the Act'') and 14 CFR part 150 by the Burbank-Glendale-Pasadena Airport Authority. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Bob Hope Airport were in compliance with applicable requirements, effective January 1, 2000. The noise compatibility program for Bob Hope Airport was approved by the FAA on November 27, 2000. The proposed Revision No. 1 to the approved noise compatibility program will be approved or disapproved on or before September 7, 2004.

DATES: The effective date of the start of the FAA's review of Revision No. 1 to the approved noise compatibility program is March 11, 2004. The public comment period ends May 10, 2004.

FOR FURTHER INFORMATION CONTACT: Michelle Simmons, Environmental Protection Specialist, Airports Division, AWP–611.4, Federal Aviation Administration, Western Pacific Region. Mailing address: P.O. Box 92007, Los Angeles, California 90009–2007; street address: 15000 Aviation Boulevard, Hawthorne, California 90261; telephone number 310/725–614. Comments on the proposed Revision No. 1 to the approved noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing the proposed Revision No. 1 to the approved noise compatibility program for Bob Hope Airport (formerly known as the Burbank-Glendale-Pasadena Airport), which will be approved or disapproved on or before September 7, 2004. This notice also announces the availability of Revision No. 1 for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has formally received the proposed Revision No. 1 to the approved noise compatibility program for Bob Hope Airport, effective on March 11, 2004. The airport operator has requested that the FAA review this material and that the noise mitigation measure, to be implemented jointly by the airport, be approved as a noise compatibility program under section 47504 of the Act. On November 27, 2000, the FAA approved the noise compatibility program for the Bob Hope Airport. An announcement of FAA's approval of the noise compatibility program was published in the **Federal Register** on December 21, 2000. Preliminary review of the submitted material for the proposed Revision No. 1 indicates that it conforms to FAR part 150 requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before September 7, 2004.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measure may reduce the level of aviation safety or create an undue burden on interstate or foreign commerce, and whether it is reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed Revision No. 1 to the approved noise compatibility program, with specific reference to these factors. All comments relating to these factors, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the approved noise compatibility program, and the proposed Revision No. 1 are available for examination at the following locations:

Federal Aviation Administration, National Headquarters, Community Environmental Needs Division, 800 Independence Avenue, SW., Room 621, Washington, DC 20591;

Federal Aviation Administration, Western-Pacific Region, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthorne, California 90261;

Mr. Dios Marrero, Executive Director, Burbank Glendale Pasadena Airport Authority, 2627 Hollywood Way, Burbank, California 91505–9989.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California on March 11, 2004.

Mia Paredes Ratcliff,

Acting Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. 04–6157 Filed 3–18–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–19]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 8, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FAA–2004–17212 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 20590–0001.

• Hand delivery: 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.

• Federal eRulemaking portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or 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.

FOR FURTHER INFORMATION CONTACT: Pat Siegrist (425–227–2126), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave., SW., Renton, WA 98055–4056; or John Linsenmeyer (202–267–5174), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 15, 2004.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2004–17212.

Petitioner: Israel Aircraft Industries, Ltd.

Sections of 14 CFR Affected: 14 CFR 25.813(b)(3), 25.857(e), and 25.1447(c)(1).

Description of Relief Sought: To allow carriage of two non-crewmembers on Boeing Model 737–300SF airplanes when operated in a freighter configuration.

[FR Doc. 04–6151 Filed 3–18–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–18]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains the dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–5174.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 15, 2004.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2003–16288.

Petitioner: Precision Conversions LLC.

Section of 14 CFR Affected: 14 CFR 25.783(h), 25.807(g)(1), 25.807(i)(1), 25.810(a)(1), 25.812(e), 25.812(h), 25.813(b), 25.857(e), 25.1445(a)(2) and 25.1447(c)(1).

Description of Relief Sought/Disposition: To allow carriage of four non-crewmembers (commonly referred to as supernumeraries) on Boeing Model 757–200 airplanes which have been converted from passenger to freighter configuration.

Partial Grant, 02/24/2004, Exemption No. 8258.

Docket No.: FAA–2003–16618.

Petitioner: Israel Aircraft Industries, Ltd.

Section of 14 CFR Affected: 14 CFR 25.783(h), 25.807(g)(1), 25.810(a)(1), 25.813(b)(3) 25.857(e) and 25.1447(c)(1).

Description of Relief Sought/Disposition: To allow carriage of two non-crewmembers (commonly referred to as supernumeraries) on Boeing Model 737 airplanes which have been modified to passenger/freight convertible airplanes.

Grant, 02/18/2004, Exemption No. 8254.

[FR Doc. 04–6152 Filed 3–18–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice To Intend To Rule on Application 04–02–C–00–ACY To Impose and Use a Revenue From a Passenger Facility Charge (PFC) at Atlantic City International Airport, Egg Harbor Township, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice to intend to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Atlantic City International Airport under the provisions of the Aviation Safety and Capacity Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 19, 2004.

ADDRESSES: Comments on this Application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Dan Vornea, Project Manager, New York District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas Rafter, Airport Director, South Jersey Transportation Authority, New Jersey, at the following address: Atlantic City International Airport, Civil Terminal #6, Egg Harbor Township, New Jersey 08234–9590.

Air carriers and foreign air carriers may submit copies of their written comments previously provided to Atlantic City International Airport under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Dan Vornea, Project Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530, telephone no. (516) 227–3812. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Atlantic City International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 10, 2004, the FAA determined that the application to

impose and use a PFC submitted by the Atlantic City International Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 7, 2004.

The following is a brief overview of the application:

Application Number: 04–02–C–00–ACY.

Level of Proposed PFC: $3.00.

Proposed Charge Effective Date: June 1, 2004.

Proposed Charge Expiration Date: November 1, 2006.

Total Estimated PFC Revenue: $1,801,760.

Brief Description of Proposed Projects: Runway 31 Category I Instrument Landing System; Taxiway ''H'' Relocation.

Class or classes of air carriers which the public agency has requested not to be required to collect PFS's are: Non-Scheduled/On Demand Air Carriers filing FAA Form 1800–31.

Any person may inspect the Application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Office: 1 Aviation Plaza, Jamaica, NY 11434–4809.

In addition, any person may, upon request, inspect the application notice and other documents germane to the application in person at the Atlantic City International Airport.

Issued in Garden City, New York on March 10, 2004.

Philip Brito,

Manager, NYADO, Eastern Region.

[FR Doc. 04–6156 Filed 3–18–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Flight Instructor Refresher Clinic Approvals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of policy change.

SUMMARY: This notice is provided to inform the aviation community that effective April 30, 2004, the FAA's General Aviation And Commercial Division, AFS–800, will no longer grant any new Flight Instructor Refresher Clinic (FIRC) approvals. After that date, only those FIRC providers holding a current FAA approval will be considered for renewal. This policy change does not effect Special Preparation Courses approved under 14 CFR 141.11(b)(2)(ii). The FAA reserves the right to approve new FIRC programs as future demands dictate. Should such a need arise the FAA will issue a new **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Mike Brown, Certification and Flight Training Branch, AFS–840, FAA, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–7653; fax (202) 267–5094; or e-mail *michael.w.brown@faa.gov.*

Background: Since the advent of Internet, or Web-based FIRCs, the demand for traditional (stand-up) and at-distance renewal programs has steadily declined. This has led to a marked reduction in requests for new FIRC program approvals. Moreover, the current Web-based FIRC providers have demonstrated the ability to meet the demand of certified flight instructors. The FAA estimates that in 2003 alone, over 8,000 certified flight instructor renewals were completed though Web-based FIRCs.

These factors, coupled with the ease and availability of existing certificate renewal methods (Web-based and at distance learning programs, the existing cadre of stand-up and Internet providers, practical test, etc.), has led the FAA to issue this notice. Further, the FAA asserts that existing methods for renewing certified flight instructor certificates are adequate to meet the current and future demands of the aviation training community. Therefore, this policy change will become effective on April 30, 2004.

Issued in Washington, DC on March 11, 2004.

Anne Graham,

Acting Manager, General Aviation and Commercial Division.

[FR Doc. 04–6149 Filed 3–18–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Final Environmental Impact Statement; Summit County, CO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, the FHWA, in cooperation with the Colorado Department of Transportation (CDOT), has prepared a Final Environmental Impact Statement (EIS) for proposed transportation improvements to State Highway 9, Frisco to Breckenridge in Summit County, Colorado. The Final EIS identifies the Preferred Alternative and associated social, economic and environmental impacts. Interested citizens are invited to review the Final EIS and submit comments. Copies of the Final EIS may be obtained by telephoning or writing the contact persons listed below under the **FOR FURTHER INFORMATION CONTACT** section below. Public reading copies of the Final EIS are available at the locations listed under **SUPPLEMENTARY INFORMATION.**

DATES: A 30-calendar-day public review period will begin on March 19, 2004, and conclude on April 19, 2004. Written comments on the Preferred Alternative and impacts to be considered must be received by CDOT by April 19, 2004. A public hearing to receive oral comments on the Final EIS will be held at the Summit High School on April 7, 2004.

ADDRESSES: Written comments on the Final EIS should be addressed to Ms. Jill Schlafer, Project Manager, Colorado Department of Transportation, Region 1, 18500 East Colfax Avenue, Aurora, CO 80011. Ms. Schlaefer's e-mail address is *jill. schlaefer@dot.state.co.us.* Copies of the Final EIS are available for public inspection and review at the locations provided in the Supplementary Information section below.

FOR FURTHER INFORMATION CONTACT: To request copies of the Final EIS or for additional information, contact: Mr. Scott Sands, FHWA, Colorado Division, 555 Zang Street, Room 250, Lakewood, CO 80228, Telephone: (303) 969–6730 extension 362; or Ms. Jill Schlaefer, Colorado Department of Transportation, Region 1, 18500 East Colfax Avenue, Aurora, CO 80011, Telephone: (303) 757–9655.

SUPPLEMENTARY INFORMATION:

Hearing Date and Location

Wednesday, April 7, 2004, 4 p.m. to 6:30 p.m. at Summit High School.

Copies of the Final EIS are available in hard copy format for public inspection at:

- CDOT Headquarters, Public Information Offices, 4201 Arkansas St., Room 277, Denver, CO 80222, 303–757–9228.
- CDOT Region 1, 18500 E Colfax Avenue, Aurora, CO 80011, 303–757–9371
- CDOT Office of Environmental Programs, 1325 South Colorado Boulevard, Suite B400, Denver, CO 80222, 303–757–9259
- Summit County Engineering Department, 37 County Rd. 1005, Frisco, CO 80443, 970–668–4200

• Town of Breckenridge Engineering Department, 150 Ski Hill Rd., Breckenridge, CO 80424, 970–547–3191
• Town of Frisco Town Clerk, 1 Main St. Frisco, CO 80443, 970–668–5276
• Summit County Library—Frisco Branch, 37 County Rd. 1005, Frisco, CO 80443, 970–668–5555
• Summit County Library—Breckenridge Branch, 504 Airport Rd., Breckenridge, CO 80424, 970–453–6098
• CDOT Mountain Residency Office, west side of Eisenhower Tunnel at I–70, Silverthorne, CO 80498, 303–512–5750
• Federal Highway Administration, Colorado Division Office, 555 Zang Street, Room 250, Lakewood, CO 80228, 303–969–6730 extension 362

Background

The Final EIS identifies and describes the components and mitigation measures for the Preferred Alternative (a four-lane reduced median roadway) for the proposed transportation improvements for SH 9 between Breckenridge and Frisco. The study area lies within Summit County, Colorado and extends approximately 14.5 kilometers (9 miles) from the northern end of Frisco at approximate milepost 97 to the southern limit of Breckenridge at approximate milepost 85. The Final EIS includes a description of the selection process, the components of the Preferred Alternative, a summary floodplain encroachment, a Wetland Finding, mitigation measures for the Preferred Alternative, the Final Section 4(f) Evaluation, and comments and responses received on the Draft EIS. Four build alternatives and a No-Action Alternative were assessed in the Draft EIS with the Final EIS identifying the Preferred Alternative (DEIS Alternative 3).

The Preferred Alternative includes four through-lanes with a reduced median and shoulders, and either a depressed rural median, a raised median, or a barrier-protected median, shoulder improvements, and intersection improvements. Also included is a roundabout at the North Park Avenue and Main Street intersection and the redesignation of SH 9 from Main Street to Park Avenue in Breckenridge. Other components of the Preferred Alternative include transit improvements, such as bus queue jumping, TDM elements, improved pedestrian and bicycle facilities, drainage improvements, retaining walls, lighting, and landscaping.

The FHWA, CDOT, and other local agencies invite interested individuals, organizations, and Federal, State, and local agencies to comment on the social, economic, or environmental impacts and mitigation measures related to the Preferred Alternative.

Issued on: March 9, 2004.

Douglas Bennett,

Assistant Division Administrator, Federal Highway Administration, Lakewood, Colorado.

[FR Doc. 04–5844 Filed 3–18–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34475]

Watco Companies, Inc.—Continuance in Control Exemption—Great Northwest Railroad, Inc.

Watco Companies, Inc. (Watco), a noncarrier, has filed a verified notice of exemption to continue in control of Great Northwest Railroad, Inc. (GNR), upon GNR's becoming a Class III rail carrier.

The transaction was scheduled to be consummated on or shortly after February 27, 2004, the effective date of the exemption.

The transaction is related to STB Finance Docket No. 34474, *Great Northwest Railroad, Inc.—Acquisition and Operation Exemption—Camas Prairie RailNet, Inc.,* wherein: (1) GNR seeks to acquire from Camas Prairie RailNet, Inc. (CPR) and operate approximately 179 miles of rail line located in the States of Idaho and Washington, and (2) GNR will acquire by assignment from CPR incidental overhead trackage rights over a 15.1-mile rail line in Washington owned by the Union Pacific Railroad Company (UP), for the purpose of interchanging traffic with UP and The Burlington Northern and Santa Fe Railway Company (BNSF).

Watco owns 100 percent of the issued and outstanding stock of GNR, and controls through stock ownership and management seven other Class III rail carriers: South Kansas and Oklahoma Railroad Company (SKO), Palouse River & Coulee City Railroad, Inc. (PRCC), Timber Rock Railroad, Inc. (TIBR), Stillwater Central Railroad (SLWC), Eastern Idaho Railroad, Inc. (EIRR), Kansas & Oklahoma Railroad, Inc. (K&O), and Pennsylvania Southwestern Railroad, Inc (PSWR).[1]

As pertinent here, EIRR's lines are located in the eastern and mid-southern parts of Idaho, and are a substantial distance from the lines being acquired by GNR. PRCC's Idaho line extends westward from Potlatch, ID, approximately 50 miles north of the line being acquired by GNR. PRCC owns and operates several branch lines north of Hooper, WA, and east of Wallula, WA, and has operating rights over UP's rail line[2] between Attalia, WA, and Hooper, which traverses Ayer, WA. The line being acquired by GNR extends eastward from Riparia, WA, to Lewiston, ID, and the incidental overhead trackage rights being acquired by GNR are over the UP line located between Riparia and Ayer.[3]

Watco states that: (i) The rail lines of GNR will not connect with any of the lines of the railroads under its control or within its corporate family, (ii) the transaction is not a part of a series of anticipated transactions that would connect GNR with any other railroad in its corporate family, and (iii) the transaction does not involve a Class I railroad. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

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. 34475, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Karl Morell, Suite 225, 1455 F Street, NW., Washington, DC 20005.

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[1] SKO's lines are located in Missouri, Kansas, and Oklahoma; PRCC's lines are located in Washington, Oregon, and Idaho; TIBR's lines are located in Texas and Louisiana; SLWC's lines are located in Oklahoma; EIRR's lines are located in Idaho; K&O's lines are located in Kansas and Colorado; and PSWR's line is located in Pennsylvania.

[2] Those rights, however, are limited to overhead movements of grain and do not permit the interchange of traffic along the route.

[3] Those trackage rights, however, are limited to traffic being interchanged by GNR with either UP or BNSF and, thus, preclude any direct interchange of traffic between GNR and PRCC.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 10, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–5994 Filed 3–18–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34474]

Great Northwest Railroad, Inc.—Acquisition and Operation Exemption—Camas Prairie RailNet, Inc.

Great Northwest Railroad, Inc. (GNR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Camas Prairie RailNet, Inc. (CPR) and operate approximately 179 miles of rail line. The lines are located in the States of Idaho and Washington as follows: (1) The 1st Subdivision, extending from milepost 137.5 at Lewiston, ID, to milepost 61.0 at or near Kooskia, ID; (2) the portion of the 2nd Subdivision, extending from milepost 0.0 at Spalding, ID, to milepost 1.0 near Spalding; [1] (3) the 3rd Subdivision, extending from milepost 0.0 at Riparia, WA, to milepost 71.5 [2] at Lewiston; and (4) the 4th Subdivision, extending from milepost 0.0 at Orofino, ID, to approximately milepost 31.0 (end of track), near Jaype, ID.[3]

GNR will also acquire by assignment from CPR incidental overhead trackage rights over a 15.1-mile rail line owned by the Union Pacific Railroad Company (UP) located between milepost 10.46 at Riparia and approximately milepost 267.1 at Ayer, WA, for the purpose of interchanging traffic with UP and The Burlington Northern and Santa Fe Railway Company.

This transaction is related to STB Finance Docket No. 34475, *Watco Companies, Inc.—Continuance in Control Exemption—Great Northwest Railroad, Inc.,* wherein Watco Companies, Inc., seeks to continue in control of GNR upon GNR's becoming a Class III rail carrier.

GNR certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or a Class I rail carrier. The transaction was scheduled to be consummated on or shortly after February 27, 2004, the effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34474, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 10, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–5995 Filed 3–18–04; 8:45 am]

BILLING CODE 4915–01–P

[1] In *Camas Prairie RailNet, Inc.—Abandonment—In Lewis, Nez Perce, and Idaho Counties, ID (Between Spalding and Grangeville, ID),* STB Docket No. AB–564 (STB served Sept. 13, 2000), CPR was authorized to abandon a line of railroad known as the Grangeville Line, or Second Subdivision, extending from milepost 0.00 near Spalding to milepost 66.8 (end of track) near Grangeville. By letter dated September 5, 2003, the Board was notified that, on December 18, 2002, applicant transferred ownership of the subject track and right-of-way to BG & CM Railroad, Inc. (BG & CM). By letter filed in this docket on March 5, 2004, CPR informed the Board that BG & CM did not acquire the entire right-of-way, only the trackage and right-of-way beyond milepost 1.0, and that CPR retained ownership of the segment between mileposts 0.0 and 1.0, which it subsequently sold along with its other rail assets to GNR.

[2] GNR states that milepost 71.5 of the 3rd Subdivision is at the same physical location as milepost 137.5 of the 1st Subdivision. These mileposts are incongruent because the Subdivisions were originally owned by different railroads.

[3] GNR states that no traffic has moved over the 4th Subdivision for over 2 years and that a majority of the line is out of service. It adds that it is currently working with potential customers on the line to see if an adequate volume of rail traffic can be developed to justify the cost of operating the line.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34481]

Horsehead Corporation—Petition for Acquisition and Operation Exemption—Chestnut Ridge Railway Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Grant of Petition for Acquisition and Operation Exemption.

SUMMARY: The Board grants Horsehead Corporation's (Horsehead) petition seeking an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to acquire and operate a 6.6-mile line of railroad in Carbon County, PA, that was formerly operated by the Chestnut Ridge Railway Company retroactive back to December 23, 2003, the date Horsehead actually acquired the line.

DATES: This exemption is effective on March 12, 2004. Petitions to reopen must be filed by April 8, 2004.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34481 must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative: Donald G. Avery, Slover & Loftus, 1224 17th Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1609.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: ASAP Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706. Telephone: (301) 577–2600. (Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.)

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 12, 2004.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

[FR Doc. 04–6088 Filed 3–18–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34473]

CSX Transportation, Inc., Norfolk Southern Railway Company, and Consolidated Rail Corporation—Modified Rail Certificate

On February 18, 2004, CSX Transportation, Inc. (CSX), Norfolk Southern Railway Company (NS), and Consolidated Rail Corporation (Conrail) (collectively, the parties) filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150, subpart C, *Modified Certificate of Public Convenience and Necessity,* to operate over certain

portions of the abandoned track of the former Staten Island Railway Corporation (SIRR) in New York and New Jersey lying generally between the Chemical Coast Secondary Line and points on Staten Island, NY. Based on the parties' representations, the lines to be activated for service include: (1) Track between milepost 3.8 at John Street east of Arlington Yard, Richmond County, NY, and milepost 6.9, via the Chemical Coast Secondary Line, at or near the connection between the Chemical Coast Connector and the Chemical Coast Secondary Line in Union County, NJ, a distance of 3.1 miles; [1] (2) track between milepost 0.0 at or near Port Ivory, Richmond County, NY, and milepost 0.94 at the end of the line near Howland Hook, Richmond County, NY, a distance of 0.94 miles; and (3) the ''Travis Branch'' between milepost 0.0 at Arlington Yard Station and milepost 3.65 in Richmond County, NY, a distance of 3.65 miles.[2] The lines to be used in providing service also include the new industrial lead and switching track to be constructed off of the Travis Branch [3] into the New York City Department of Sanitation facility being constructed at the Fresh Kills landfill site on Staten Island (Fresh Kills facility).

The provision of freight rail service in this proceeding is a component of the Staten Island Railroad Revitalization Project, a joint effort between the Port Authority and NYCEDC. The parties state that, at this time, they are negotiating an operating agreement with NYCEDC that will govern how such freight rail service will occur.[4]

The parties anticipate that the traffic flows over the subject lines will primarily consist of the following: (1) Block movements of intermodal traffic, assembled by the Howland Hook Marine Terminal/Port Ivory operator, to and from Arlington Yard (Howland Hook Traffic); (2) movements of containerized municipal solid waste, assembled by the Fresh Kills facility operator, to and from the Fresh Kills facility (Fresh Kills Traffic); and (3) movements of mixed merchandise (including aggregates and paper products) to and from two potential customers located on the Travis Branch (Travis Branch Traffic).

The parties indicate that, in general, Conrail will move the Howland Hook Traffic and the Travis Branch Traffic to and from Staten Island to the Conrail Shared Assets Areas for line haul movement via NS and CSX. Conrail will switch the Travis Branch Traffic, if and when it develops, directly from the customers' facilities. NS and/or CSX will likely serve the Fresh Kills Traffic directly. The parties state that Conrail will dispatch the subject lines, while NYCEDC will retain responsibility for maintaining the subject lines and operating the Arthur Kill Lift Bridge.

The rail lines qualify for a modified certificate of public convenience and necessity. *See Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivisions,* Finance Docket No. 28990F (ICC served July 16, 1981).

The parties indicate that the only precondition to a shipper's receipt of service is the execution of an agreement with CSX or NS that specifies the rates and other terms and conditions of the service such carriers will provide. They also indicate that: (1) There are no subsidizers, and (2) existing insurance covering the parties' current operations will be expanded to cover operations over the subject lines; no additional insurance will be acquired.

This notice will be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F Street, NW., Washington, DC 20001; and on the American Short Line and Regional Railroad Association: American Short Line and Regional Railroad Association, 50 F Street, NW., Suite 7020, Washington, DC 20001.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 12, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–6090 Filed 3–18–04; 8:45 am]

BILLING CODE 4915–01–P

[1] On January 21, 2004, the Board served a decision in *Port Authority of New York and New Jersey—Petition for Declaratory Order,* STB Finance Docket No. 34428, finding that the construction by the Port Authority of New York and New Jersey (Port Authority) of the connector between the SIRR trackage and the Chemical Coast Secondary Line, and operations thereover, do not require Board approval. The parties will reach this segment via the connector. No trains will operate on the abandoned SIRR lines until 2005, when it is anticipated that construction of the connector will be complete.

[2] The SIRR was abandoned in two parts. Those segments subject to this proceeding that were approved for abandonment in *Staten Island Railway Corporation—Abandonment,* Docket No. AB–263 (Sub–No. 3) (ICC served Dec. 5, 1991) include: (1) Track between milepost 3.8 at John Street and milepost 12.09 at or near Cranford Junction, NJ; and (2) track between milepost 0.0 at or near Port Ivory and milepost 0.94 near Howland Hook. The Travis Branch was abandoned pursuant to authority granted in *Staten Island Ry. Corp.—Aband. Exempt.—In Richmond County, NY,* Docket No. AB–263 (Sub–No. 2X) (ICC served July 3, 1990). The lines were subsequently acquired by the States of New York and New Jersey. No freight rail traffic has moved over these lines since these abandonments became effective. Segments of the former SIRR that are not the subject of this proceeding are those that lie west of the Chemical Coast Secondary Line.

[3] On October 29, 2003, the New York City Economic Development Corporation (NYCEDC) filed a petition in *The New York City Economic Development Corporation—Petition for Declaratory Order,* STB Finance Docket No. 34429, for a declaratory order seeking certain determinations as to the Travis Branch. A decision in that case is pending.

[4] Following the negotiation of this operating agreement, the parties state that they will submit a petition seeking: (1) An exemption pursuant to 49 U.S.C. 10502 from the approval requirements of 49 U.S.C. 11323 to permit the parties to implement the operations described in the modified certificate in a manner described in the agreement; (2) a prior determination that the authority granted by the Board pursuant to the petition will automatically expire upon the termination of the modified certificate, and that Conrail will not be able to unilaterally terminate the modified certificate; and (3) a determination that the grant of authority under 49 U.S.C. 11323 will not give Conrail any ratemaking, interchange, or other common carrier authority that it currently lacks. The parties indicate that a copy of the operating agreement will accompany the petition.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 646X)]

CSX Transportation, Inc.—Abandonment Exemption—in Pinellas County, FL

On March 1, 2004, CSX Transportation, Inc. (CSXT), filed with the Board a petition under 49 U.S.C. 10502 for exemption from 49 U.S.C. 10903 to abandon a line of railroad in its Southern Region, Jacksonville Division, Clearwater Subdivision, extending from milepost SY 893.80 to milepost SY 895.65, a distance of approximately 1.85 miles, in St. Petersburg, Pinellas County, FL. The line traverses U.S. Postal Service Zip Codes 33712 and 33705 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by June 18, 2004.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will

be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than March 29, 2004. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 646X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Jonathan C. Gold, 500 Water Street, J150, Jacksonville, FL 32202. Replies to the CSXT petition are due on or before March 29, 2004.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA, will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on the Board's Web site at *http://www.stb.dot.gov.*

Decided: March 15, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–6089 Filed 3–18–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–50–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–50–86 (TD 8110), Sanctions on Issuers and Holders of Registration-Required Obligations Not in Registered Form (§§ 1.65–12 and 1.1287–1).

DATES: Written comments should be received on or before May 18, 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 information collection 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: Sanctions on Issuers and Holders of Registration-Required Obligations Not in Registered Form.

OMB Number: 1545–0786.

Regulation Project Number: INTL–50–86.

Abstract: Sections 165(j) and 1287(a) of the Internal Revenue Code provide that persons holding registration-required obligations in bearer form are subject to certain penalties. These sections also provide that certain persons may be exempted from these penalties if they comply with reporting requirements with respect to ownership, transfers, and payments on the obligations. The reporting requirements in this regulation are necessary to ensure that persons holding registration-required obligations in bearer form properly report interest income and gain on disposition of the obligations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 750,000.

Estimated Time Per Response: 3 minutes.

Estimated Total Annual Burden Hours: 39,742.

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. 04–6222 Filed 3–18–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–255–81]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–255–81 (T.D. 8002), Substantiation of Charitable Contributions (§ 1.170A–13).

DATES: Written comments should be received on or before May 18, 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 information collection 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: Substantiation of Charitable Contributions.

OMB Number: 1545–0754.

Regulation Project Number: LR–255–81.

Abstract: This regulation provides guidance relating to substantiation requirements for charitable contributions. Section 1.170A–13 of the regulation requires donors to maintain receipts and other written records to substantiate deductions for charitable contributions.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 26,000.000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 2,158.000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 15, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–6223 Filed 3–18–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–536–89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–536–89 (TD 8300), Registration Requirements With Respect to Certain Debt Obligations; Application of Repeal of 30 Percent Withholding by the Tax Reform Act of 1984 (§ 1.1998 to be assured of consideration.

DATES: Written comments should be received on or before May 18, 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 information collection 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: Registration Requirements With Respect to Certain Debt Obligations; Application of Repeal of 30 Percent Withholding by the Tax Reform Act of 1984.

OMB Number: 1545–1132.

Regulation Project Number: INTL–536–89.

Abstract: Sections 165(j) and 1287(a) of the Internal Revenue Code provide that persons holding registration-required obligations in bearer form are subject to certain penalties. These sections also provide that certain persons may be exempted from these penalties if they comply with reporting requirements with respect to ownership, transfers, and payments on the obligations. The reporting and recordkeeping requirements in this regulation are necessary to ensure that persons holding registration-required obligations in bearer form properly report interest and gain on disposition of the obligations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents/Recordkeepers: 5000.

Estimated Time Per Respondent/Recordkeeper: 10 minutes.

Estimated Total Annual Reporting/Recordkeeping Hours: 852.

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. 04–6224 Filed 3–18–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–221–83 and FI–100–83]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking (FI–221–83) and temporary regulation (FI–100–83), Indian Tribal Governments Treated as States for Certain Purposes (§§ 305.7701–1 and 305.7871–1).

DATES: Written comments should be received on or before May 18, 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 information collection 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: Indian Tribal Governments Treated as States for Certain Purposes.

OMB Number: 1545–0823.

Regulation Project Number: FI–221–83 (notice of proposed rulemaking) and FI–100–83 (temporary regulation).

Abstract: These regulations relate to the treatment of Indian tribal governments as States for certain Federal tax purposes. The regulations provide that if the governing body of a tribe, or its subdivision, is not designated as an Indial tribal government or subdivision thereof for purpose of sections 7701(a)(40) and 7871 of the Internal Revenue Code, it may apply for a ruling to that effect from the Internal Revenue Service.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 25.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 25.

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. 04–6225 Filed 3–18–04; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 69, No. 54
Friday, March 19, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

National Indian Health Board

Correction

In notice document 04–5305 beginning on page 11447 in the issue of Wednesday, March 10, 2004, make the following corrections:

1. On page 11448, in the first column, in the 11th line, ''$227,00.00'' should read ''$227,000.00''.

2. On the same page, in the second column, under the heading ''**FOR FURTHER INFORMATION CONTACT**'', in the seventh line, ''Tyan'' should read ''Ryan''.

[FR Doc. C4–5305 Filed 3–18–04; 8:45 am]

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37 CFR Part 270

[Docket No. RM 2002–1E]

Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

Correction

In rule document 04–5404 beginning on page 11515 in the issue of Thursday, March 11, 2004, make the following correction:

§ 270.1 [Corrected]

On page 11528, in the first column, in § 270.1, in paragraph (e)(2), in the second line from the bottom, ''igital'' should read ''digital''.

[FR Doc. C4–5404 Filed 3–18–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–09–AD; Amendment 39–13496; AD 2001–13–18 R1]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Corporation Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) Airplanes

Correction

In rule document 04–4372 beginning on page 9526 in the issue of Monday, March 1, 2004, make the following correction:

§ 39.13 [Corrected]

On page 9528, in § 39.13, the table is corrected in part to read as follows:

Action	When	In accordance with
* *	* * *	* *
(2) Modify each airspeed indicator glass by accomplishing the following:	All actions required within 10 hours time-in-service (TIS) after July 9, 1999 (the effective date of AD 99–12–02), unless already accomplished.	Not Applicable.
(i) Place a red radial line on each indicator glass at 175 miles per hour (mph) (152 knots).		
(ii) Place a white slippage index mark between each airspeed indicator glass and case to visually verify that the glass has not rotated.		
(3) Mark the outside surface of the ''g'' meters with lines of approximately 1/16-inch by 3/16-inch, as follows:	All actions required within 10 hours time-in-service (TIS) after July 9, 1999 (the effective date of AD 99–12–02), unless already accomplished.	Not Applicable.
* *	* * *	* *

[FR Doc. C4–4372 Filed 3–18–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
March 19, 2004

Part II

Small Business Administration

13 CFR Part 121

Small Business Size Standards; Restructuring of Size Standards; Proposed Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AF11

Small Business Size Standards; Restructuring of Size Standards

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to modify its small business size standards by establishing size standards in terms of the number of employees of a business concern for most industries and SBA programs. This change will reduce the number of different size standard levels and at the same time simplify size standards and their application to Federal Government programs. Under this proposal, size standards will range between 50 employees and 1,500 employees, depending on the industry or SBA program.

For a limited number of industries, SBA proposes to establish a maximum average annual receipts amount (referred to as a receipts cap) along with the employee-based size standard. Concerns in those industries that meet the employee-based size standard also cannot exceed a specific receipts cap to qualify as an eligible small business.

To further simplify size standards, SBA also proposes the following: (1) modify the size standard for the Surety Bond Guarantee (SBG) Program by replacing the $6 million size standard with the requirement that the contractor meet the size standard for its primary industry; (2) extend the 125,000 barrels per calendar day component of the size standard for petroleum refiners beyond Federal Government procurement to all Federal small business programs using SBA's size standards; (3) eliminate the special size standard based on market share for tire manufacturers that applies to only Federal Government procurement; (4) modify three receipts-based size standards and one employee-based size standard for the sale or lease of Government property; and (5) revise the nonmanufacturer size standard applicable to Federal procurements from 500 employees to 100 employees, the size standard that applies to wholesale trade businesses for all other SBA programs.

DATES: Comments must be received on or before May 18, 2004.

ADDRESSES: Send comments to Gary M. Jackson, Assistant Administrator for Size Standards, 409 Third Street, SW., Mail Code 6530, Washington DC 20416; by email to *restructure.sizestandards@sba.gov;* or by facsimile at (202) 205–6390. You may also submit comments to *www.regulations.gov.* Upon receipt of a written request under the Freedom of Information Act, SBA will make all public comments available.

FOR FURTHER INFORMATION CONTACT: Contact the SBA's Office of Size Standards at (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION: SBA's 37 small business size standards have evolved over the past 40 years from a considerably smaller number that applied only to SBA's financial assistance programs and to Federal procurement programs. Presently, there are size standards for 1,151 industries and 11 special financial and procurement programs. Many of these size standards resulted from the expansion and development of new SBA programs, the increasing size and complexity of the U.S. economy, and demands from small businesses to address unique situations.

SBA's current size standards use two primary measures of business size—number of employees and average annual receipts. Financial assets, electric generation, and refining capacity are used for a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC) and the Certified Development Company (CDC) Programs determine small business eligibility based on either the industry-based size standards or net worth and net income size standards.

The current structure of SBA's size standards has worked well. However, several recurring criticisms suggest that SBA should consider improving their current structure. These criticisms raise questions about the complexity of determining if a business is small, the fairness of defining a business as small in some industries but not others, the influence of Federal procurement programs in establishing size standards, and the intentional misclassification of Federal contracts or the primary industry activity of a business to apply a different, and usually a much higher, size standard.

SBA's last comprehensive attempt to address size standards was in the late 1970s and early 1980s. Although SBA considered several approaches, it made only a few minor changes. The most important change replaced two sets of size standards, one for procurement programs and one for financial programs, with a single set for all programs. SBA also adjusted receipts-based size standards for inflation and formalized a methodology for evaluating size standards.

In the early 1990s, SBA proposed to streamline size standards with nine levels of size standards (four receipts-based size standards and five employee-based size standards) similar to one aspect of this proposed rule. Public comments tended to favor this approach. However, SBA determined that converting receipts-based size standards in effect at that time to one of four proposed receipts levels created a number of unacceptable anomalies and, therefore, did not adopt it as a final rule.

Currently, SBA's size standards consist of 37 different size levels which apply to 1,151 industries and 13 sub-industry activities in the North American Industry Classification System (NAICS). In addition, a size standard has been established for 11 financial and procurement programs. Thirty size standards are based on annual receipts, five are based on number of employees, and two are based on other measures. Table 1a below summarizes the current receipts-based size standards and Table 1b summarizes the current employee-based and other size standards.

TABLE 1a.—SIZE STANDARDS BASED ON ANNUAL RECEIPTS

Range of receipts-based size standards	Number of different receipts-based size standards in the range	Number of industries covered by size standards in this range
$48.5 million	1	1
$21.5 million to $30 million	8	52
$12.5 million to $21 million	7	24

TABLE 1a.—SIZE STANDARDS BASED ON ANNUAL RECEIPTS—Continued

Range of receipts-based size standards	Number of different receipts-based size standards in the range	Number of industries covered by size standards in this range
$12 million	1	24
$7 million to $11 million	7	46
$6 million	1	337
$1.5 million to $4 million	4	18
$0.75 million	1	46

TABLE 1b.—EMPLOYEE-BASED AND OTHER SIZE STANDARDS

Size standard	Number of industries covered by the size standard
1,500 employees	17
1,000 employees	66
750 employees	63
500 employees	388
100 employees	71
$150 million in assets	6
4 million megawatt hours	6

Most variations in size standards occur among those based on annual receipts. In many cases, a specific receipts-based size standard applies to only one or a few industries. SBA believes it can simplify size standards and make them less complicated by establishing a single size standard measure and reducing the number of different size standard levels. With fewer size standards, they will be clearer, more consistent, and easier to understand, resulting in less confusion to users, particularly the non-governmental users, such as small businesses. In addition, a single size measure eliminates a problem that some concerns encounter when they operate in different industries that have different size standard measures. The information technology industries provide a good example of this situation. Many information technology businesses provide both goods and services. Yet, SBA's size standards are based on number of employees for providers of computer and peripheral equipment and receipts for providers of computer services. Consequently, an information technology business may be small for one type of work but not small for a related activity.

Proposal to Use Employee-based Size Standards for All Industries

SBA proposes to restructure its size standards by establishing an employee-based size standard for each industry. The number of employees of a business concern is its average number of persons employed for each pay period over the firm's latest 12 months and includes the employees of all affiliates. Any person on the payroll must be included as one employee regardless of hours worked or temporary status. The number of employees of a firm in business under 12 months is based on the average for each pay period it has been in business. For more information on how SBA calculates the employment size of a business, see 13 CFR 121.106.

The size standards currently based on number of employees will be retained at their current levels. This proposal converts the current size standards that are based on receipts, financial assets, or generating capacity to employee-based size standards. SBA proposes to establish an employee-based size standard which varies for each industry, but is limited to one of the following ten employee levels:

TABLE 2.—PROPOSED EMPLOYEE SIZE STANDARD LEVELS

50	100	150	200	300
400	500	750	1,000	1,500

SBA believes that fewer size standard levels also help to simplify size standards. In converting receipts-based size standards to employee-based size standards (described further below), five new employee size levels (50, 150, 200, 300, and 400) along with the current five employee size levels (100, 500, 750, 1,000 and 1,500) results in employee-based size standards that equate to about the same number of eligible small businesses as does the current receipts-based size standards. A fewer number of employee size levels would result in a much larger number of businesses gaining or losing small business eligibility while a greater number of employee size levels would apply to only a small number of businesses and not simplify the size standards to the same degree.

Why the SBA Proposes Employee-Based Size Standards for All Industries

SBA believes that a single measure of size helps make size standards less complex. Having a single size measure simplifies the structure and enables SBA to establish fewer size standard levels. Under a structure composed of one size measure and fewer size standard levels, many small businesses that currently operate in several industries each with different size standards would in many cases be subject to only one or two different size standards under the proposed employee-based size standards. SBA believes that the benefits of simplification that come from having a single size measure outweigh the benefits of retaining multiple size measures.

Proposing number of employees as the only measure of business size departs from SBA's long tradition of using receipts and other non-employee size measures. SBA has generally utilized receipts as a preferred size measure because it constitutes the value of a concern's output. Other measures of size are used where receipts tend to skew the value added by a concern in the production of goods and services. For example, SBA uses number of employees to define a small manufacturing concern. For manufacturing, two manufacturers in the same industry with the same number of employees can generate significantly different receipts depending on the number of stages in their production operations. Receipts for a manufacturer in its final production stage include the value added by the manufacturer(s) in its earlier production stages. This is true even though the value added by the final manufacturer may be minor relative to the value of the final product. Because of this characteristic of manufacturing, number of employees has a stronger correlation to value added than do receipts.

Several aspects of employee-based size standards support SBA's decision to use them as the single measure of size

for all industries. The single best reason to do so is that they do not vary with changing economic conditions. Inflation, for example, has no direct impact on employee-based size standards. Similarly, rising costs unique to an industry have no direct impact on employee-based size standards. An ideal size standard would not affect eligibility, unless a company's level of real output of goods and services changes.

Employment also tends to be a more stable measure of business size. Businesses have economic incentives to maintain their workforce as business fluctuates to avoid recruitment and training costs. Using overtime can satisfy short-term increases in output until management is convinced that a permanent increase in business activity justifies adding personnel. Most businesses, especially small businesses, display a strong commitment to their employees and they are reluctant to change employment levels frequently in response to short-term business considerations.

Finally, number of employees is a widely accepted measure of business size. More than half of the present SBA size standards are expressed in employees. Although employment is an input into the production of goods and services, it generally accounts for a significant portion of total costs. A business's employment level is a representative indicator of its resources as well as its scale of operations. In one of the few studies conducted on an appropriate size standard measure, two researchers concluded that the number of employees of a business had a stronger correlation with the qualitative description of a small business (an approach to defining a small business preferred by many small business analysts) than did receipts. (*See* ''Definition of Small Business,'' Scott Holmes and Brian Gibson, The University of Newcastle, April 5, 2001. The report is available at *http://www.smallbusiness.org.au/sbc/publications/sbc004a.htm*.)

How SBA Determined the Number of Employees for Size Standards With Annual Receipts and Other Size Measures

SBA developed criteria for deciding which of the ten employee size standard levels to apply to an industry that currently has a receipts-based size standard. These criteria were designed to convert a receipts-based size standard to an equivalent employee-based size standard. The primary tool used to calculate the equivalent employee size standard associated with a receipts-based size standard is the receipts-to-employee ratio for an industry. Data to calculate these ratios were provided to the SBA by the U.S. Bureau of the Census in a special tabulation of the 1997 Economic Census (The 1997 Economic Census is available at *http://www.census.gov/epcd/www/econ97.html).* Since total receipts in an industry are provided along with employees in the industry, SBA was able to calculate receipts per employee ratios for almost all industries covered by this rule. These ratios were next adjusted 8.54% to account for inflation that occurred from 1997 to 2002 (the year in which receipts-based size standards were last adjusted for inflation). SBA used the chain-type price index for gross domestic product (GDP) (as published by the U.S. Department of Commerce, Bureau of Economic Analysis, and is available at *http://www.bea.gov/bea/ARTICLES/2003/10October/D–Pages/1003DpgC.pdf),* which is a broad measure of inflation for the economy as a whole. The resulting figure was divided into the present receipt-based size standard for the industry under review to calculate an employee equivalent size standard. This employee equivalent size standard was then rounded to the closest of the ten employee size standard levels to minimize the difference between the current receipts-based size standard and the calculated employee-based size standard.

The criteria also preserve the common size standard level that SBA currently has established for related industries. That is, for closely related industries that have the same receipts size standard, SBA has proposed an employee size standard that best represents an equivalent employee size standard for that group of industries, such as the computer services industries.

Below are the criteria and how SBA applied them to receipts-based size standards.

Selection of Employment Size Standard for Industries With a $6 Million Size Standard

For industries with a $6 million size standard, SBA had three considerations. The first consideration was whether to propose a 50 employee size standard for those industries. SBA's methodology for evaluating a size standard for a nonmanufacturing industry presumes that $6 million in average annual receipts is an appropriate size standard. This size standard is generally referred to as the ''nonmanufacturing anchor size standard.'' SBA considers a size standard higher or lower than the anchor level as appropriate for an industry when the structural economic characteristics of the industry are significantly different from the typical nonmanufacturing industry. SBA has decided to retain the concept of an anchor size standard for the nonmanufacturing industries as part of its restructuring and simplification of size standards. However, SBA proposes that the anchor size standard will be expressed in number of employees rather than receipts. Based on the ratio of receipts to employees in the nonmanufacturing industries, 50 employees is the employee anchor size standard for the nonmanufacturing industries. SBA is proposing a 50 employee size standard for industries currently with a $6 million size standard, unless the criteria discussed in the second and third considerations are present within an industry.

SBA's second consideration was whether the size standard should be higher than the 50 employee size standard anchor for industries where the conversion of receipts to employees produces a figure significantly above 50 employees. The SBA has decided to propose a size standard of 50 employees for industries where the conversion produces an equivalent size standard from 51 to 74 employees, since these levels round to the closest of the ten proposed employee size standards. For industries where the receipts to employees conversion results in a figure of 75 employees or more, the SBA selected a size standard above 50 employees, but only if other information justified the higher size standard. In these cases, a higher size standard is appropriate to (1) reflect the industrial structure of the industry, or (2) avoid a significant reduction in the number of small businesses currently eligible to compete for Federal procurements.[1]

SBA's third consideration examined the relationship of the size standard with other size standards within an

[1] Federal procurement is an appropriate consideration because of the special support provided by SBA to small businesses through the 8(a) Business Development Program, the Small Disadvantaged Business Program, the HUBZone Program, the Small Business Set-Aside program and subcontracting programs. Not only has SBA implemented policies to assist small businesses to develop through these Federal procurement programs, but the businesses themselves have made economic and business decisions affecting their eligibility for these programs. The SBA wants to avoid taking away small business eligibility for Federal procurement programs from a large number of small businesses that could otherwise result from this size standards restructuring proposal. This consideration is limited to industries in which significant Federal Government contracting opportunities exist, or with approximately $100 million or more in Federal contracting.

industry subsector or industry group (three-digit and four-digit NAICS codes, respectively). For several industries with a $6 million size standard, SBA decided to propose a size standard greater than 50 employees in order to maintain the size standard relationship within their industry group (such as for the Land Subdivision and Land Development industry, NAICS 236110).

An example of the decision process utilizing the three criteria is Barber Shops (NAICS 81211), whose present size standard is $6 million. Dividing $6 million by the inflation-adjusted figure of $34,700 receipts per employee resulted in the equivalent size standard of 172 employees. This level rounds to 150 employees using the preselected employee size standards. However, the SBA believes that a 150 employee size standard for barber shops is too high, and that the 50 employee proposed anchor size standard better matches the industry structure for barber shops, as well as public perception of what constitutes a small business in this industry. This industry has one of the largest concentrations of very small businesses, where the average size barber shop is only three employees.

By contrast, the present size standard for the Other Airport Operations industry (NAICS 488119) has the same $6 million anchor size standard. Dividing $6 million by the $56,969 receipts per employee resulted in the equivalent size standard of 105 employees, which the SBA rounded to 100 employees. The average size firm in this industry has 49 employees—more than four times the average size firm of 11 employees for the nonmanufacturing industries with a $6 million size standard. In addition, the 50 employee anchor size standard would render approximately 50 currently defined small businesses ineligible to compete for Federal procurements that require small business status. In FY 2002, the Federal Government awarded more than $280 million in contract awards, with small businesses obtaining less than $17 million in contracts. A 50 employee size standard would have the unintended result of further diminishing the participation of small businesses in Federal contracting within this industry activity.

Three hundred and thirty-seven industries have a size standard of $6 million. In applying the above considerations, SBA proposes a 50 employee size standard for 315 industries, and a higher size standard for the remaining 21 industries. The chart below identifies the 21 industries with a size standard higher than 50 employees and the basis for proposing a higher size standard.

TABLE 3.—INDUSTRIES CURRENTLY WITH A $6 MILLION SIZE STANDARD THAT SBA PROPOSES A SIZE STANDARD HIGHER THAN 50 EMPLOYEES

NAICS codes	NAICS industry	Proposed employee size standard	Reason for employee size standard different from anchor size standard
237210	Land Subdivision	200	Common size standard for all industries in Subsector 237 and impact on Federal procurement.
485111	Mixed Mode Transit Systems	100	Common size standard for most transit industries (NAICS Subsector 485).
485112	Commuter Rail Systems	100	Common size standard for most transit industries.
485113	Bus and Other Motor Vehicle Transit Systems	100	High average firm size.
485119	Other Urban Transit Systems	100	Common size standard for most transit industries.
485210	Interurban and Rural Bus Transportation	100	High average firm size.
485410	School and Employee Bus Transportation	100	High average firm size and common size standard for most transit industries.
485510	Charter Bus Service	100	Common size standard for most transit industries.
486210	Pipeline Transportation of Natural Gas	100	High average firm size and common size standard with NAICS 486990, All Other Pipeline Transportation.
488119	Other Airport Operations	100	High average firm size and impact on Federal procurement.
488190	Other Support Activities for Air Transportation	100	Common size standard with NAICS 488119 and impact on Federal procurement.
512131	Motion Picture Theatres (except Drive-In)	100	High average firm size.
518112	Web Search Portals	150	Common size standard for all industries in Subsector 518 and impact on Federal procurement.
561422	Telemarketing Bureaus	150	High average firm size.
621910	Ambulance Services	100	High average firm size and common size standard with other ambulatory health services.
711310	Promoters of Performing Arts, Sports, & Similar Events with Facilities.	100	High average firm size.
713110	Amusement and Theme Parks	100	High average firm size.
713920	Skiing Facilities	200	High average firm size.
721110	Hotels (except Casino Hotels) and Motels	100	High average firm size and impact on Federal procurement.
721120	Casino Hotels	100	High average firm size and common size standard with hotels and motels.
812930	Parking Lots and Garages	100	High average firm size.

Selection of Employment Size Standard for Industries Size Standards Above or Below $6 Million

For industries that have a size standard below $6 million, SBA has proposed 50 employees. This would establish the policy that any business with 50 or fewer employees is a small business regardless of its industry. Only a few industries would be affected by this proposal, and we strongly believe that the benefits of simplification outweigh any impact on SBA's programs or on other Federal small business programs.

For industries with a size standard above $6 million, SBA calculated an equivalent employee size standard based on the ratio of receipts to employees. For example, the receipts per employee of a computer systems design firm is $152,000. A firm of $21 million equates to a firm with 127 employees. Because SBA is proposing to have size standards at one of ten employee levels, SBA rounded this figure to the nearest employee size standard, or 150 employees.

For most of these industries, SBA proposes the size standard resulting from the receipts per employee ratio. For closely related industries (those within the same 4-digit NAICS Industry Group or 3-digit NAICS Subsector) that currently have a common receipts-based size standard, SBA proposes a common employee-based size standard, even though a different size standard could be established for each closely related industry based on the receipts-to-employee calculation. SBA recognizes that small businesses are often eligible for SBA assistance in a number of closely related industries, and it simplifies size standards if closely related industries have the same size standard. An example of this pattern is the computer services industries in which businesses typically operate in at least several of the nine computer services industries. After reviewing the equivalent employee-based size standards for the nine computer services industries, SBA is recommending a common size standard of 150 employees for all nine computer services industries. Examples of other industries where SBA proposes a common size standard include the consulting service industries, the trucking industries, the warehousing industries, and the waste management industries.

Summary of Proposed Employee Size Standards

In summary, the major factors influencing the proposed employee size standard are:

- A size standard of 50 employees generally applies when an industry receipt-based size standard is at the present anchor of $6 million in average annual receipts or is less than $6 million;
- An employee size standard above 50 employees applies to an industry with a $6 million size standard if the calculated equivalent employee size standard is above 76 employees and industry structure, existing size standards relationships, or Federal procurement implications merited a size standard above 50 employees.
- An employee size standard for an industry above $6 million is based on the calculated equivalent employee-based size standard.
- Exceptions to these rules occurred when SBA attempted to maintain traditional size standards relationships within closely related industries.

Selection of Employment Size Standard for Industries With Size Standards Based on Electric Generation and Financial Assets

The size standard for the industries involved in the generation, transmission, or distribution of electric energy (NAICS 221111–221122) is 4 million megawatts of total electric output (*see* footnote 1 of the table to size standards in § 121.210). The U.S. Bureau of the Census does not publish capacity data on businesses in this industry. SBA identified small electric utilities from the U.S. Department of Energy's publication ''Financial Statistics of Investor-Owned Electric Utilities, 1996'' (available at *http://www.eia.doe.gov/cneaf/electricity/invest/invest _sum.html).* SBA reviewed publicly available information, such as Security and Exchange Commission 10–K reports, to determine the employment levels of small electric utilities. Based on this review, SBA is proposing a 1,000 employee size standard for the electrical generation, transmission, and distribution industries. At that employment size, electric utilities under the current 4 million megawatt size standard would continue to be defined as small without adding other electric utilities as small.

The size standard for the banking and other credit intermediation industries (NAICS 522110—522210, and 522293) is $150 million in financial assets (*see* footnote 8 to the table of size standards in § 21.201). The U.S. Bureau of the Census does not publish industry financial data on the banking and credit industries. Using asset and employment data published by the Federal Deposit Insurance Corporation's Statistics on Depository Institutions (available at *http://www2.fdic.gov/SDI/main4.asp*), the average assets per employee of smaller banks is about $2.5 million. Based on those data, a $150 million bank would have, on average, about 60 employees. Applying the methodology described above, SBA is proposing a 50 employee size standard for banking and other credit intermediation industries since that is the nearest of the ten employee size standards proposed by this rule.

Proposal To Add a Maximum Average Annual Receipts Cap as an Additional Component of the Size Standard for Certain Industries

SBA further proposes that 31 industries will have a maximum average annual receipts amount (referred to as a receipts cap) along with the employee-based size standard. To qualify as small, concerns in those industries would have to be no greater in size than the employee-based size standard and have average annual receipts less than the receipts cap amount. SBA proposes that 36 size standards in the following 31 industries have an annual receipts cap along with the proposed employee size standard. Table 4, below, lists those industries and SBA's proposed employee size standards and receipts caps.

TABLE 4.—INDUSTRIES WITH PROPOSED RECEIPTS CAPS

NAICS codes	NAICS U.S. industry title	Proposed number of employees	Proposed maximum annual receipts ($ million)
115310	Support Activities for Forestry	50	N/A
Except,	Forest Fire Suppression	400	$20.0
Except,	Fuels Management Services	400	$20.0

TABLE 4.—INDUSTRIES WITH PROPOSED RECEIPTS CAPS—Continued

NAICS codes	NAICS U.S. industry title	Proposed number of employees	Proposed maximum annual receipts ($ million)
236115	New Single-Family Housing Construction (except Operative Builders)	150	$35.0
236116	New Multifamily Housing Construction (except Operative Builders)	150	$35.0
236117	New Housing Operative Builders	150	$35.0
236118	Residential Remodelers	150	$35.0
236210	Industrial Building Construction	150	$35.0
236220	Commercial and Institutional Building Construction	150	$35.0
237110	Water and Sewer Line and Related Structures Construction	200	$35.0
237120	Oil and Gas Pipeline and Related Structures Construction	200	$35.0
237130	Power and Communication Line and Related Structures Construction	200	$35.0
237210	Land Subdivision	200	$35.0
237310	Highway, Street, and Bridge Construction	200	$35.0
237990	Other Heavy and Civil Engineering Construction	200	$35.0
Except,	Dredging and Surface Cleanup Activities	150	$22.0
518210	Data Processing, Hosting, and Related Services	150	$30.0
541310	Architectural Services	50	$7.0
541330	Engineering Services	50	$7.0
Except,	Military and Aerospace Equipment and Military Weapons	200	$30.0
Except,	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992.	200	$30.0
Except,	Marine Engineering and Naval Architecture	150	$30.0
541511	Custom Computer Programming Services	150	$30.0
541512	Computer Systems Design Services	150	$30.0
541513	Computer Facilities Management Services	150	$30.0
541519	Other Computer Related Services	150	$30.0
541611	Administrative Management and General Management Consulting Services	50	$10.0
541612	Human Resources and Executive Search Consulting Services	50	$10.0
541613	Marketing Consulting Services	50	$10.0
541614	Process, Physical Distribution and Logistics Consulting Services	50	$10.0
541618	Other Management Consulting Services	50	$10.0
541620	Environmental Consulting Services	50	$10.0
541690	Other Scientific and Technical Consulting Services	50	$10.0
541990	All Other Professional, Scientific and Technical Services	50	$10.0
561110	Office Administrative Services	50	$10.0
561210	Facilities Support Services	400	$40.0
611519	Other Technical and Trade Schools	50	N/A
Except,	Job Corps Centers	400	$30.0

In some industries, businesses have more latitude in deciding whether to hire employees to perform work or to subcontract the work to others. For example, general contractors can decide what and how much construction work to perform themselves and what work to subcontract to others. Under an employee-based size standard, a business may exceed the size standard because it decided to perform more work in-house while another business performing the same level of work stays under the employee size standard because more work is subcontracted. Under SBA's Small Business Size Regulations, the employees of a subcontractor are not included in counting the number of employees of a business (unless affiliation was found between the business and subcontractor). SBA recognizes that such decisions and their implications on small business status are best made by the management of concerns that will be affected. SBA is concerned, however, about cases where businesses operating in industries that have greater latitude in subcontracting significant portions of work purposely subcontract an unusual amount of work relative to customary industry practices to retain small business status. Because of this potential, SBA proposes to establish an average annual receipts cap along with employee size standards in the 31 industries listed in Table 4, above.

In the industries for which SBA proposes an employee-based size standards and receipts cap size standard, it expects that most businesses which are small under the applicable employee size standard will also meet the corresponding receipts cap. The purpose of the receipts cap is to prevent businesses from creatively manipulating their employment levels to remain small. Without such a receipts cap requirement, SBA might otherwise, and inappropriately, provide large businesses with assistance that is intended for small businesses, and put small businesses in the position of competing against businesses that by any consideration are not small. As discussed further below, the receipts cap will include almost all businesses under the employee size standard, but exclude those businesses that have an inordinate amount of receipts for their level of employment.

How the SBA Determined the Maximum Annual Receipts Cap Level for the Industry Activities in Table 4 (Above)

The methodology in determining the receipts caps was to first examine the size distribution of firms that are presently in SBA's Procurement Marketing and Access (PRO-Net) database which was merged with the Department of Defense Central Contractor Registration—the SBA's list of small businesses interested in doing business with the Federal Government. For each of the 31 industries under review, it has data on the number of

employees and the annual receipts of each firm in that database that is active in the industry. SBA analyzed employment and receipts data of small businesses near the proposed employee size standard. By calculating a receipts to employee ratio for each of these small businesses, and then multiplying that ratio by the proposed size standard in employees, the SBA was able to estimate at what point a small business would lose eligibility under a receipt cap if it were to expand to the new size standard limit based on employees. In other words, if a business has 110 employees, what level of receipts would it produce if it expanded to a proposed 150 employee size standard.

The proposed receipt caps were designed to permit a majority of the small businesses that are presently under the size standard to expand to the proposed employee-based size standard without exceeding the dollar caps. The receipts caps proposed generally range from 22% to 35% higher than the current receipts size standards for those industries with a size standard of $15 million or higher, and from 67% to 74% higher than the current receipts size standard for those industries that have a receipts size standard of $6 million or less. The only exemption to this analysis was for the newly established Job Corps Centers size standard (part of NAICS 611519). This sub-industry consists of a small number of businesses. The current receipts size standard fully captures all small businesses under the proposed employee size standard for this sub-industry category and is retained as the receipts cap.

Simplification of Other Program and Special Size Standards

SBA has established a number of size standards to meet the needs of specific programs or to address special Federal procurement considerations. SBA proposes to eliminate or modify six of these size standards in an attempt to further simplify size standards and to apply consistent size standards for all Federal Government programs and purposes.

1. Surety Bond Guarantee (SBG) Program size standard: SBA proposes that any construction (general or special trade) concern or a concern performing a contract for services is small provided it meets the size standard for the NAICS code for its primary industry. Currently, the size standard for the SBG Program is $6 million for performing contracts for construction (general or special trades) or services (see 13 CFR 121.301(d)(1)).

Federal procurement regulations require a contractor to meet the size standard for the NAICS code that best describes the principal purposes of the procurement. Therefore, if a contractor bids and is successful as a prime contractor on a Federal procurement, it may qualify as a small business if it meets the size standard for the procurement, even if the size standard exceeds $6 million. Further, § 121.305 states ''A concern qualified as small for a particular procurement, including an 8(a) subcontract, is small for financial assistance directly and primarily relating to the performance of the particular procurement.'' SBA's SBG Program is a financial assistance program, and contractors awarded Federal contracts requiring a surety bond are therefore eligible for SBA's guarantee on the bond, if a guarantee is needed, including those with size standards in excess of $6 million, provided the contractor meets the size standard for its industry.

However, for SBA to guarantee a surety bond involving a subcontract or a bond running to an obligee other than the Federal Government, such as a private owner or non-Federal political subdivision or agency, a contractor is not eligible for an SBA guarantee unless it meets the current $6 million size standard. SBA believes this is inconsistent with the intent of its SBG Program because it does not provide assistance to small businesses otherwise eligible as small for SBA's other financial assistance programs. SBA proposes to eliminate the $6 million size standard. SBA proposes, rather, that a contractor applying for SBA's guarantee meet the size standard for its primary industry for any bond (§ 121.301(d)). This is consistent with the intent of this proposed rule, which is to base all size standards on number of employees and have a single size standard for all programs.

2. Petroleum refining size standard: The size standard for the Petroleum Refineries industry (NAICS 324110) is 1,500 employees. In addition, for purposes of the Federal Government's procurement of refined petroleum products, the refiner may not have more than 125,000 barrels per calendar day (bpcd) capacity of petroleum-based inputs, including crude oil or bona fide feedstocks. This is included in Footnote 4 to SBA's current table of small business size standards. SBA increased the refining capacity from 75,000 bpcd to 125,000 bpcd, effective April 28, 2003 (see 68 FR 15047 dated March 28, 2003, available at *http://www.sba.gov/size/indexwhatsnew.html#petrol-fr*).

SBA proposes to extend the 125,000 bpcd size standard component to all Federal Government programs. Before the April 28, 2003 revision, SBA had progressively increased the refining capacity component over a number of years. In its last two rulemaking actions pertaining to the petroleum refining size standard, SBA's proposed rules included a request for comments on whether SBA should retain or eliminate the refining capacity component. SBA retained it because industry comments have always been very strong in favor of doing so. The petroleum refining industry has always affirmed that refining capacity is the single best measure of a refiner's size. Further, it is the same measure that the U.S. Department of Energy, Energy Information Administration, uses to assess the size of refiners and their refineries.

Before proposing to increase the refining capacity component, SBA studied the petroleum refining industry to analyze the effect that it would have on existing small businesses. The final rule increasing it to 125,000 bpcd did not increase the number of small businesses, nor did any small businesses lose eligibility. That is, there was no change in the number of small refiners. There were other reasons for the rule, more fully described in the **Federal Register** notice cited above. This proposed change (footnote 5, § 121.201) is consistent with SBA's intention to simplify size standards, by having a single size standard apply to an industry for all Federal Government programs and purposes.

Because the remaining eligibility requirements for petroleum refiners are Federal procurement specific, and not part of the size standard, SBA does not propose to extend them to other Federal programs.

3. Tire manufacturing size standard: The size standard for the Tire Manufacturing (except Retreading) industry (NAICS 326211) is 1,000 employees. For the Federal Government's procurement of pneumatic tires under this NAICS code and within Census Classification codes 30111 and 30112, SBA has established an alternative size standard based on a concern's share of the worldwide tire market (see Footnote 5 to SBA's current table of size standards). Tire manufacturers satisfying the provisions of this alternative size standard exceed 1,000 employees in size. SBA implemented these requirements effective January 18, 1967 (see 31 FR 15737). SBA believes, based on Federal procurement data, that this footnote is no longer necessary. A review of Federal

contract awards in fiscal years 2001 and 2002 found that all small businesses receiving tire supply contracts met the current 1,000 employee size standard. SBA therefore proposes to eliminate this alternative size standard.

4. Sales or lease of Federal Government property: SBA proposes to modify the following three receipts-based and one employee-based size standards that pertain to programs involving the sale and lease of Federal Government property:

(a) Size standards for sales or leases of Government property: The current size standard for concerns not primarily engaged in manufacturing is $6 million (see § 121.502(a)(2)). SBA proposes to establish a size standard of 50 employees for those concerns. This is consistent with the intent of this proposed rule, which is to base all size standards on number of employees. Also, this proposal is consistent with the criteria to propose a 50 employee size standard for industries that currently have a $6 million size standard unless certain conditions exits. SBA does not believe industry or procurement factors exist to warrant a different size standard.

(b) Size standards for the purchase of Government-owned Special Salvage Timber: To purchase Government-owned Special Salvage Timber from the U.S. Forest Service or the U.S. Bureau of Land Management, a concern, with its affiliates, can have no more than 25 employees during any of its pay periods for the last twelve months, and must meet other requirements as well (see § 121.508). SBA proposes to increase this size standard to 50 employees. SBA believes that applying the 50 employee anchor size standard as a minimum size standard is warranted to achieve its overall goal of simplicity and uniformity among the various size standards. SBA does not propose to amend any other parts of § 121.508, since they are Federal procurement specific requirements and not part of the size standard.

(c) Size standard for leasing of Government land for coal mining: Under the current size standard, a concern, together with its affiliates, may have no more than 250 employees (see § 121.509(a)). SBA proposes increasing this to 300 employees. Retaining 250 employees as a size standard would increase the number of size standards overall (from 10 to 11), and this would be the only 250 employee size standard. SBA has decided to round up this size standard to the 300 employee level instead of rounding down to 250 employees to avoid eliminating eligibility of currently defined small businesses for this program.

(d) Size standard for stockpile purchases: Under the current standard, a concern, together with its affiliates, may not have average annual receipts that exceed $48.5 million (§ 121.512(b)). SBA proposes to establish a size standard of 400 employees for those concerns. Based on the ratio of receipts to employees of businesses with $48.5 million or less in receipts ($109,000 receipts per employee), this size standard equates to 445 employees. Four hundred employees is the closest of the 10 employee-based size standards proposed in this rule. SBA believes that the proposed size standard would not eliminate the eligibility of currently defined small businesses for this program

5. Nonmanufacturer size standard: The SBA proposes to revise the nonmanufacturer size standard from 500 employees to 100 employees. A nonmanufacturer is a business that provides a manufactured product to the Federal Government that it itself did not manufacture (see § 121.406(b)). Substantially all nonmanufacturers are in industries categorized within the Wholesale Trade industries (NAICS Sector 42). A size standard of 100 employees applies to wholesalers for SBA and Federal Government programs, except for Federal procurement programs. Therefore, to further the simplification of small business size standards, the SBA is proposing to eliminate the special 500 employee nonmanufacturer size standard by applying the 100 employee size standard for Wholesale Trade to Federal procurement programs.

SBA continues to believe that 100 employees is an appropriate size standard for the Wholesale Trade Sector. The average size of a wholesaler is 16 employees. Wholesalers with fewer than 100 employees comprise 97% of all wholesalers, employ about 50% of all employees, and generate one-third of total industry receipts. The relatively small share of total industry receipts generated by small wholesalers, however, reflects the significantly higher receipts per employee generated by larger wholesalers in the industry than by small wholesalers. Given the industry share of firms and employment of wholesalers with fewer than 100 employees, SBA believes a current Wholesale Trade Sector size standard of 100 employees would be an appropriate size standard.

Exceptions to the SBA's Proposal To Simplify Size Standards by Basing All of Them on Number of Employees

This proposed rule does not change three size standards, because they are either established by statute or reflect unique program objectives. To ensure that the public is aware of the reasons for not modifying these size standards, SBA explains why it does not propose to modify the following:

1. Agricultural Enterprises: The Small Business Act (15 U.S.C. 632(a)(1)) states in section 3(a)(1) ''an agricultural enterprise shall be deemed to be a small business concern if it (including its affiliates) has annual receipts not in excess of $750,000.'' This provision applies to concerns in the Crop Production (NAICS Subsector 111) and Animal Production (NAICS Subsector 112) industries. SBA has no authority to modify this Congressionally-mandated size standard.

2. Net Worth/Net Income: Size standards based on the net worth and net income of a business concern are an alternative to SBA's industry-based size standards for the CDC and SBIC financial assistance programs authorized under Title III and Title V of the Small Business Investment Act (Pub. L. 100–107). That is, an applicant may qualify as a small business if it meets the size standard for its primary industry or the net worth and net income size standards. For the CDC program, an applicant must meet either: (a) SBA's size standard established for its primary industry activity; or (b) have tangible net worth not in excess of $7 million and average net income after Federal income taxes for its two preceding completed fiscal years not in excess of $2.5 million (§ 121.301(b)). For assistance under SBA's SBIC Program, an applicant must meet either: (a) SBA's size standard established for its primary industry activity; or, (b) with its affiliates, have tangible net worth not in excess of $18 million and average net income after Federal income taxes for its two preceding completed fiscal years not in excess of $6 million (§ 121.301(c)).

The alternative net worth and net income size standards for the CDC and SBIC programs have been in place for many years and have worked well in serving the intended beneficiaries. Most small businesses qualifying under the net worth and net income size standards also qualify under the industry-based size standards. However, the option to qualify as small under the industry-based size standards ensures that a small business eligible for other SBA programs is also eligible for assistance under the CDC and SBIC Programs. Therefore, SBA believes that the net worth and net income size standards should be retained for these programs.

Impact on Small Business Eligibility of the Proposed Rule

This proposed rule would change the 514 size standards that are based on receipts, financial assets, or electric generation. As discussed above, the proposed conversion of these receipts-based size standards to employee-based size standards attempts to establish an employment level that is generally equivalent to the receipts-based size standard. Because of variation within industries, some businesses will gain or lose small business eligibility. The decision to establish only ten employee size standard levels also results in some businesses gaining or losing small business eligibility. An analysis of the impact of the proposed rule on small business eligibility shows that a relatively small number of businesses will be affected. Out of approximately 4.4 million businesses in the industries with revised size standards, 35,200 businesses could gain and 34,100 could lose small business eligibility, with the net effect of 1,110 additional businesses defined as small. The 69,300 businesses affected by this proposal represent 1.6% of the 4.4 million businesses in industries with changing size standards. The regulatory impact and regulatory flexibility analyses discussed below describe the impact of this proposal in greater detail.

Alternatives to This Proposed Rule

SBA considered a number of alternative approaches to simplify and restructure its size standards. These are briefly described below. SBA welcomes comments on these alternatives or other alternatives to restructure and simplify size standards.

1. Retain the existing employee-based size standards, while reducing the 30 receipts-based size standards to a fewer number of size standard levels, such as four to eight different receipts size standards. This approach is similar to SBA's proposals of December 31, 1992 (57 FR 62522) and September 2, 1993 (58 FR 46573), which SBA did not adopt as final rules. As discussed above in this proposed rule, SBA believes a single size measure (with a receipts size standards cap for a limited number of industries) represents a less complicated set of size standards.

2. Establish size standards by industry category that would generally be based on NAICS Industry Sectors or Subsectors, such as the size standards of the three Construction Subsectors. Under this approach, SBA could establish a size standard by number of employees and/or receipts for each industry group, and size standards across industries would vary considerably less. This approach would limit SBA's ability to fully assess the need for distinct size standards for specific industries, especially in the Professional, Scientific, and Technical Services Industry Sector.

3. Base all size standards on number of employees, with no receipts cap component. SBA discusses above in this proposed rule why it believes a receipts cap along with an employee size standard is needed for certain industries.

Request for Comments

SBA requests comments on its proposal to simplify and restructure size standards. Specifically, SBA requests comments on the following issues:

1. Are SBA's small business size standards complex, confusing or difficult to use? If so, please describe to what extent the proposed rule addresses this concern.

2. Should all small business size standards be based on number of employees?

3. Do the proposed size standards essentially maintain the level of small business eligibility within an industry that currently exists under the current receipts-based size standards?

4. Should there be a receipts cap component for those industries where subcontracting and outsourcing opportunities may allow a business to remain small but generate an unusually large amount of receipts?

5. Is it appropriate to apply an additional receipts cap requirement for the 31 industries in Table 4, above? Are there other industries that SBA should have a receipts cap?

6. Are the proposed receipts cap levels an appropriate or acceptable way to exclude large businesses?

7. Is one or more of the alternatives that SBA considered preferable to the proposed rule? If so, please explain why. What would be the impact of SBA's adopting one of the alternatives in place of the proposed rule?

8. Should SBA modify the size standard for its SBG Program and require that any construction (general or special trade) concern or concern performing a contract for services is small provided it meets the size standard for its primary industry?

9. Should SBA extend to all Federal Programs the 125,000 bpcd component of the size standard applicable to the Federal Government's procurement of refined petroleum, as described above?

10. Should the SBA eliminate the 500 employee size standard for nonmanufacturers applicable to Federal procurement programs and apply the Wholesale Trade Sector size standard of 100 employees?

11. Should SBA eliminate the special market share size standard for tire manufacturers, as described above?

12. Does the expanded use of employee-based size standards result in additional burdens on businesses verifying small business status or on Federal agencies that use SBA's size standards? These issues are discussed as part of SBA's regulatory impact and regulatory flexibility analyses of this proposed rule (see following two sections).

Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

The Office of Management and Budget (OMB) has determined that this rule is a significant regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800. For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order. For purposes of Executive Order 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule would not impose new reporting or record keeping requirements. It is important to note, however, that while there are no new reporting and record keeping requirements, the size status of a business in industries that currently have a receipts-based size standard will no longer be based on a concern's Federal Income Tax returns, except for those industries whose size standards have receipts caps. Rather, proof of eligibility as a small business will be a concern's payroll records for the period of measurement specified in § 121.106. SBA acknowledges that, in the event it must determine a business' employment size status, it may be more difficult to verify the accuracy of the payroll records submitted. At times, SBA may request a business provide more information to substantiate its employment information. SBA estimates that it takes four hours, on average, to complete an ''Application for Small Business Size Determination'' (SBA Form 355, OMB Approval No. 3245–0101). SBA invites comments on

whether using employee-based size standards for new industries would be significantly more burdensome on small businesses and result in additional time to complete SBA Form 355. If so, how could SBA reduce the burden?

Regulatory Impact Analysis

1. Need for This Regulatory Action

Small business size standards have become complicated and burdensome for many users. Because size standards have become more complex over time, SBA believes that they should be made more uniform and easier to use. SBA believes that these simplified size standards will be less of a hindrance to small businesses that would like to participate in Federal small business programs and to personnel involved in small business Federal procurement and lending programs.

SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, SBA must establish distinct definitions by which businesses are deemed small businesses. The Small Business Act (Act) gives the SBA Administrator responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The supplementary information to this proposed rule explains how SBA proposes to modify size standards, and why it believes that establishing employee-based size standards for all industries will be simpler while defining small businesses as equally well as the current structure.

2. Potential Benefits and Costs of This Regulatory Action

Small businesses will benefit because they will find it easier to use the small business size standards to determine if they are a small business. Also, there will be more common size standards among similar industries. Because size standards will be perceived as being less confusing and more straightforward, more small businesses will be encouraged to participate in Federal Government small business programs.

Other users of SBA's small business size standards, such as Federal Government Contracting Officers and commercial lenders that participate in SBA's financial assistance programs, will also benefit. There will be fewer size standards and they will be able to apply them more easily to their needs, and provide better and faster service to small businesses in need of assistance.

In the Federal Government, SBA's size standards are used for procurement programs, the Small Business Innovation Research Program (SBIR), loan programs, and regulatory flexibility analyses; plus, agencies use the size standards for other programmatic purposes. Currently, six agencies use small business size standards for various programs specific to their agencies. After discussions with each of these agencies, SBA believes that this proposed revision of its size standards would not negatively impact any of the program objectives of these agencies. Three agencies viewed positively the objective of simplifying size standards.

The U.S. Department of Transportation pointed out that certain Federal, state and local disadvantaged businesses enterprise (DBE) programs administer programs to certify businesses as small DBEs. Most of the businesses seeking DBE certification come from the construction and services industries that currently have receipts-based size standards. The change to employee size standards from receipts size standards will require applicants for small DBE certification to state their size in terms of number of employees. If a certification office questions the employment size of an applicant, the applicant will have to substantiate their employment size based on payroll records. A review of payroll records is a more time-consuming process than reviewing an applicant's Federal Income Tax return when questions arise concerning the applicant's receipts size. SBA believes that in most cases, the additional time to request and evaluate an applicant's employment size will not be substantial. SBA requests comments on the use of employee size standards on the DBE certification process and how to minimize an additional burden, if any, on the DBE process.

If an agency believes that a size standard different from an SBA's size standard is appropriate for its programs, it must contact SBA. If the agency seeks to change size standards in a general rulemaking context, then the agency should contact SBA's Office of Size Standards (see 13 CFR 121.901–904). If the agency seeks to change size standards for the purposes of its analysis under the Regulatory Flexibility Act (RFA), then the agency should contact SBA's Office of Advocacy (Advocacy) pursuant to section 601(3) of the RFA. Section 601(3) of the RFA requires the agency to consult with Advocacy and provide opportunity for public comment when it uses a different size standard for the RFA analysis.

Additional costs to the Federal Government will be negligible, if any. There will be approximately 1,100 additional small businesses under the proposed restructured size standards. This is less than 0.03% of the businesses in the affected industries. SBA believes that there will be a savings to the Federal Government because there will be fewer size standards, all having employee-based measures, which will reduce administrative costs.

In this rule, the SBA also proposes to revise the nonmanufacturer size standard from 500 employees to 100 employees. The great majority of nonmanufacturers are categorized under Wholesale Trade Sector (NAICS Sector 42) in which the size standard for all industries is 100 employees, except for Federal procurements. To further the simplification, SBA is proposing the same size standard of 100 employees for Federal procurement for wholesale trade industries under the nonmanufacturer size standard. This shift from a 500 employee size standard to one of 100 employees is estimated to affect 744 firms active in Federal procurement based on the SBA's Pro-Net data base of firms interested in doing business with the Federal Government. This data base includes a total of 30,700 firms in the wholesale trade NAICS codes, and a percentage loss of 2.4% would occur if the 100 employee size standard were finalized.

SBA estimates that there will be little distributional effects if this proposed rule is adopted. Small business size standards primarily serve Federal Government agencies in their procurement programs. Federal prime contractors also use them in their subcontracting plans. Since there will be less than a 0.03% increase in newly eligible small businesses, it is possible that a very limited amount of the Federal contracts will transfer from non-small businesses to small businesses.

The proposed revision to the current size standard structure is consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with State, local, or tribal governments in the exercise of their government functions. In a few cases, State and local governments and

political subdivisions have voluntarily adopted SBA's size standards for their programs to eliminate the need to establish an administrative mechanism to develop their own size standards.

Initial Regulatory Flexibility Analysis

Under the RFA, this rule, if finalized, could have a significant impact on a substantial number of small entities because 35,200 businesses could gain and 34,100 could lose small business eligibility for Federal Government programs. SBA estimates that the net effect will be approximately 1,100 more eligible small businesses than at present. Immediately below, SBA sets forth an initial regulatory flexibility analysis of this rule addressing the following: (1) Need for and objective of the rule; (2) description and estimate of the number of small entities to which the rule will apply; (3) projected reporting, record keeping, and other compliance requirements of the rule; (4) relevant Federal rules that may duplicate, overlap, or conflict with the rule; and (5) alternatives to allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities.

1. Need for and Objective of the Rule

Small business size standards have become complicated and difficult to apply for many users. Because size standards have become so complex and confusing, SBA believes size standards should be more uniform and consistent, easier to use, and more reliable. SBA believes that these simplified size standards will be less of a hindrance to small businesses that would like to participate in Federal small business programs. In addition, it will reduce perceived impediments for providers of small business assistance who use them, such as personnel involved in Federal procurement and commercial lending, and possibly increase small business participation in Federal programs.

2. Description and Estimate of the Number of Small Entities To Which the Rule Will Apply

The SBA estimates that the simplification of size standards by converting receipt-based size standards to employee-based size standards will have a net impact of increasing the number of businesses eligible for SBA assistance by 1,100 firms. This includes an additional 35,200 businesses in 196 industries and the loss of 34,100 businesses in 229 industries. Overall, the SBA estimates that a total of 69,300 businesses could be impacted by this rule in terms of eligibility for SBA's programs. Since approximately 4.4 million businesses are active in industries covered by this rule, SBA estimates that 1.6% of businesses could be affected. However, the great majority of these businesses are not involved in SBA's programs in any one year, and the actual impact is likely to be only a small proportion of the 69,300 estimate. SBA's guaranteed loan program, for example, generated approximately 55,000 loans in FY 2002, indicating that just over one percent of eligible small businesses seek out SBA financial assistance in a given year. The SBA's PRO-Net database of small businesses interested in Federal procurement includes approximately 200,000 businesses—again, only a small proportion (about 4%) of businesses considered small by the SBA. Overall, SBA estimates that fewer than 3,000 businesses out of 4.4 million firms will be directly affected if these proposed changes were to be finalized, and that about half of these businesses would gain eligibility while the other half would lose eligibility.

Although the overall impact will be small relative to the number of businesses with revised size standards, certain industries will be impacted more than others. In particular, the SBA notes that the two restaurant industries, Full Service Restaurants (NAICS 722110) and Limited Service Restaurants (NAICS 722211), have the largest number of businesses losing eligibility for SBA assistance if this rule were to be finalized. In total, these two industries would lose about 14,600 businesses out of 272,000 businesses in both industries, a loss of 5.4% of the total. This stems from SBA's moving from a $6 million size standard to a 50 employee size standard in these industries. However, even under the new anchor size standard of 50 employees, 252,000 out of 272,000 businesses in these two restaurant industries would remain small and eligible for SBA assistance, almost 93% of the total. Other industries with relatively higher proportion of small businesses that could lose eligibility include Child Day Care Services (NAICS 624410), with a loss of 3.1% of businesses; Golf Courses and Country Clubs (NAICS 7138910), with a loss of 10.7% of businesses; Vocational Rehabilitation Services (NAICS 624310), with a loss of 20.7% of businesses; and Fitness and Recreational Sports Centers (NAICS 713940), with a loss of 5.4% of businesses. Among industries gaining eligibility, the biggest impact is Offices of Real Estate Agents and Brokers (NAICS 531210), with an additional 3,600 businesses out of a total of 54,700, or 6.6%.

Overall, SBA estimates that most industries will experience a very small impact from this rule relative to the total number of businesses that are active in industries covered by this rule. Among industries for which the SBA has industry data provided by the U.S. Bureau of the Census, there are a total of 440 industries with 4.4 million businesses, or approximately 10,000 businesses in the average industry. Of these 440 industries, 198 would have a total impact of fewer than 20 businesses, while 288 would have a total impact of fewer than 50 businesses.

Also in this rule, the SBA proposes to revise the nonmanufacturer size standard from 500 employees to 100 employees. The great majority of nonmanufacturers are categorized under Wholesale Trade Sector (NAICS Sector 42) in which the size standard for all industries is 100 employees, except for Federal procurements. To further the simplification, SBA is proposing the same size standard of 100 employees for Federal procurements for wholesale trade industries under the nonmanufacturer size standard. This shift from a 500 employee size standard to one of 100 employees is estimated to affect 744 firms active in Federal procurement based on the SBA's PRO-Net data base of firms interested in doing business with the Federal Government. This data base includes a total of 30,700 firms in the wholesale trade NAICS codes, and a percentage loss of 2.4% would occur if the 100 employee size standard were finalized.

3. Projected Reporting, Record Keeping, and Other Compliance Requirements of the Rule

The new table with all size standards based on number of employees does not impose any additional reporting, record keeping, or compliance requirements on small entities. Users may need to revise existing data bases that use current size standards. However, this is true anytime SBA changes or otherwise modifies a size standard. For example, a much more extensive change occurred when SBA converted from the Standard Industrial Classification (SIC) system to NAICS effective October 1, 2000, and later adopted, effective October 1, 2002, the U.S. Office of Management and Budget's 2002 modifications to NAICS. SBA was not made aware of any user problems with those actions.

It is important to note, however, that while there are no new reporting and record keeping requirements, the size status of a business in industries that currently have a receipts-size standard will no longer be based on a concern's Federal Income Tax returns, except for

those industries whose size standards have receipts caps. Rather, proof of eligibility as a small business will be a concern's payroll records for the period of measurement specified in § 121.106. SBA acknowledges that, in the event it must determine a business' employment size status, it may be more difficult to verify the accuracy of the payroll records submitted. At times, SBA may request a business to provide more information to substantiate its employment information. SBA estimates that it takes four hours, on average, to complete an ''Application for Small Business Size Determination'' (SBA Form 355). SBA invites comments as to whether using employee-based size standards for new industries would be significantly more burdensome on small businesses and result in additional time to complete a SBA Form 355 and, if so, how SBA could reduce the burden.

4. Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Rule

In the Federal Government, SBA's size standards are used for procurement programs, the SBIR Program, loan programs, and regulatory flexibility analysis; plus, agencies use the size standards for other programmatic purposes. Currently, six agencies use small business size standards for various programs specific to their agencies. After discussions with each of these agencies, SBA believes that this proposed revision of its size standards will not negatively impact any of the program objectives of these agencies. Three agencies viewed positively the objective of simplifying size standards.

The U.S. Department of Transportation pointed out that certain Federal, state, and local governments administer programs to certify businesses as small disadvantaged business enterprises (DBE). Most of the businesses seeking DBE certification come from the construction and services industries that currently have receipts-based size standards. The change to employee size standards from receipts size standards will require applicants for small DBE certification to state their size in terms of number of employees. If a certification office questions the employment size of an applicant, the applicant will have to substantiate its employment size based on payroll records. A review of payroll records is a more time-consuming process than reviewing an applicant's Federal Income Tax return when questions arise concerning the applicant's receipts size. SBA believes that in most cases, the additional time to request and evaluate an applicant's employment size will not be substantial. SBA requests comments on the use of employee size standards on the DBE certification process and how to minimize an additional burden, if any, on the DBE process.

5. Alternatives To Allow the Agency To Accomplish Its Regulatory Objectives While Minimizing the Impact on Small Entities

As discussed above in the **SUPPLEMENTARY INFORMATION,** there are three alternatives to the proposed rule: (a) Retain the existing employee-based size standards, while reducing the 30 receipts-based size standards to a fewer number of size standard levels, such as four to eight different receipts size standards; (b) establish size standards by industry category that would generally be based on NAICS Industry Sectors or Subsectors, such as the size standards of the three Construction Subsectors; and (c) base all size standards on number of employees, with no receipts cap component.

SBA believes the proposed size standards based on number of employees will simplify size standards and will likely have a minimal adverse impact on small entities. The other alternatives SBA considered would achieve fewer benefits in terms of simplifying size standards or have a much greater impact on the number of businesses either gaining or losing small business eligibility.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA proposes to amend part 13 CFR Part 121.

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 636(b), 637(a), 644(c), and 662(5); and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188, Pub. L. 106–24, 113 Stat. 39.

2. Revise § 121.201 to read as follows:

3. *§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?*

The size standards set forth in this section apply to all SBA programs unless otherwise specified in this part. The size standards themselves are expressed in number of employees. Some of the NAICS industries have an additional maximum annual receipts amount. For those NAICS industries with additional annual receipts amounts, the business concern must not exceed the employee-based size standard and the annual receipts amount to qualify as a small business. The number of employees and annual receipts amount are together a single size standard, and they indicate the maximum allowed for a concern, together with its affiliates, to be considered a small business.

NAICS codes	NAICS U.S. industry title	Size standards in number of employees	Maximum average annual receipts ($ million)
	Sector 11—Agriculture, Forestry, Fishing and Hunting		
Subsector 111—Crop Production			
111110	Soybean Farming		$0.75
111120	Oilseed (except Soybean) Farming		$0.75
111130	Dry Pea and Bean Farming		$0.75
111140	Wheat Farming		$0.75
111150	Corn Farming		$0.75
111160	Rice Farming		$0.75
111191	Oilseed and Grain Combination Farming		$0.75
111199	All Other Grain Farming		$0.75
111211	Potato Farming		$0.75

NAICS codes	NAICS U.S. industry title	Size standards in number of employees	Maximum average annual receipts ($ million)
111219	Other Vegetable (except Potato) and Melon Farming		$0.75
111310	Orange Groves		$0.75
111320	Citrus (except Orange) Groves		$0.75
111331	Apple Orchards		$0.75
111332	Grape Vineyards		$0.75
111333	Strawberry Farming		$0.75
111334	Berry (except Strawberry) Farming		$0.75
111335	Tree Nut Farming		$0.75
111336	Fruit and Tree Nut Combination Farming		$0.75
111339	Other Noncitrus Fruit Farming		$0.75
111411	Mushroom Production		$0.75
111419	Other Food Crops Grown Under Cover		$0.75
111421	Nursery and Tree Production		$0.75
111422	Floriculture Production		$0.75
111910	Tobacco Farming		$0.75
111920	Cotton Farming		$0.75
111930	Sugarcane Farming		$0.75
111940	Hay Farming		$0.75
111991	Sugar Beet Farming		$0.75
111992	Peanut Farming		$0.75
111998	All Other Miscellaneous Crop Farming		$0.75
Subsector 112—Animal Production			
112111	Beef Cattle Ranching and Farming		$0.75
112112	Cattle Feedlots	50	
112120	Dairy Cattle and Milk Production		$0.75
112210	Hog and Pig Farming		$0.75
112310	Chicken Egg Production	50	
112320	Broilers and Other Meat Type Chicken Production		$0.75
112330	Turkey Production		$0.75
112340	Poultry Hatcheries		$0.75
112390	Other Poultry Production		$0.75
112410	Sheep Farming		$0.75
112420	Goat Farming		$0.75
112511	Finfish Farming and Fish Hatcheries		$0.75
112512	Shellfish Farming		$0.75
112519	Other Animal Aquaculture		$0.75
112910	Apiculture		$0.75
112920	Horse and Other Equine Production		$0.75
112930	Fur-Bearing Animal and Rabbit Production		$0.75
112990	All Other Animal Production		$0.75
Subsector 113—Forestry and Logging			
113110	Timber Tract Operations	50	
113210	Forest Nurseries and Gathering of Forest Products	50	
113310	Logging	500	
Subsector 114—Fishing, Hunting and Trapping			
114111	Finfish Fishing	50	
114112	Shellfish Fishing	50	
114119	Other Marine Fishing	50	
114210	Hunting and Trapping	50	
Subsector 115—Support Activities for Agriculture and Forestry			
115111	Cotton Ginning	50	
115112	Soil Preparation, Planting, and Cultivating	50	
115113	Crop Harvesting, Primarily by Machine	50	
115114	Postharvest Crop Activities (except Cotton Ginning)	50	
115115	Farm Labor Contractors and Crew Leaders	50	
115116	Farm Management Services	50	
115210	Support Activities for Animal Production	50	
115310	Support Activities for Forestry	50	
Except,	Forest Fire Suppression [1]	[1] 400	[1] $20.0
Except,	Fuels Management Services [1]	[1] 400	[1] $20.0

NAICS codes	NAICS U.S. industry title	Size standards in number of employees	Maximum average annual receipts ($ million)
	Sector 21—Mining		
Subsector 211—Oil and Gas Extraction			
211111	Crude Petroleum and Natural Gas Extraction	500	
211112	Natural Gas Liquid Extraction	500	
Subsector 212—Mining (except Oil and Gas)			
212111	Bituminous Coal and Lignite Surface Mining	500	
212112	Bituminous Coal Underground Mining	500	
212113	Anthracite Mining	500	
212210	Iron Ore Mining	500	
212221	Gold Ore Mining	500	
212222	Silver Ore Mining	500	
212231	Lead Ore and Zinc Ore Mining	500	
212234	Copper Ore and Nickel Ore Mining	500	
212291	Uranium-Radium-Vanadium Ore Mining	500	
212299	All Other Metal Ore Mining	500	
212311	Dimension Stone Mining and Quarrying	500	
212312	Crushed and Broken Limestone Mining and Quarrying	500	
212313	Crushed and Broken Granite Mining and Quarrying	500	
212319	Other Crushed and Broken Stone Mining and Quarrying	500	
212321	Construction Sand and Gravel Mining	500	
212322	Industrial Sand Mining	500	
212324	Kaolin and Ball Clay Mining	500	
212325	Clay and Ceramic and Refractory Minerals Mining	500	
212391	Potash, Soda, and Borate Mineral Mining	500	
212392	Phosphate Rock Mining	500	
212393	Other Chemical and Fertilizer Mineral Mining	500	
212399	All Other Nonmetallic Mineral Mining	500	
Subsector 213—Support Activities for Mining			
213111	Drilling Oil and Gas Wells	500	
213112	Support Activities for Oil and Gas Operations	50	
213113	Support Activities for Coal Mining	50	
213114	Support Activities for Metal Mining	50	
213115	Support Activities for Nonmetallic Minerals (except Fuels)	50	
	Sector 22—Utilities		
Subsector 221—Utilities			
221111	Hydroelectric Power Generation	1,000	
221112	Fossil Fuel Electric Power Generation	1,000	
221113	Nuclear Electric Power Generation	1,000	
221119	Other Electric Power Generation	1,000	
221121	Electric Bulk Power Transmission and Control	1,000	
221122	Electric Power Distribution	1,000	
221210	Natural Gas Distribution	500	
221310	Water Supply and Irrigation Systems	50	
221320	Sewage Treatment Facilities	50	
221330	Steam and Air-Conditioning Supply	50	
	Sector 23—Construction		
Subsector 236—Construction of Buildings			
236115	New Single-Family Housing Construction (except Operative Builders)	150	$35.0
236116	New Multifamily Housing Construction (except Operative Builders)	150	$35.0
236117	New Housing Operative Builders	150	$35.0
236118	Residential Remodelers	150	$35.0
236210	Industrial Building Construction	150	$35.0
236220	Commercial and Institutional Building Construction	150	$35.0
Subsector 237—Heavy and Civil Engineering Construction			
237110	Water and Sewer Line and Related Structures Construction	200	$35.0
237120	Oil and Gas Pipeline and Related Structures Construction	200	$35.0
237130	Power and Communication Line and Related Structures Construction	200	$35.0

NAICS codes	NAICS U.S. industry title	Size standards in number of employees	Maximum average annual receipts ($ million)
237210	Land Subdivision	200	$35.0
237310	Highway, Street, and Bridge Construction	200	$35.0
237990	Other Heavy and Civil Engineering Construction	200	$35.0
Except,	Dredging and Surface Cleanup Activities [2]	[2] 150	[2] $22.0
Subsector 238—Specialty Trade Contractors			
238110	Poured Concrete Foundation and Structure Contractors	100	
238120	Structural Steel and Precast Concrete Contractors	100	
238130	Framing Contractors	100	
238140	Masonry Contractors	100	
238150	Glass and Glazing Contractors	100	
238160	Roofing Contractors	100	
238170	Siding Contractors	100	
238190	Other Foundation, Structure, and Building Exterior Contractors	100	
238210	Electrical Contractors	100	
238220	Plumbing, Heating, and Air-Conditioning Contractors	100	
238290	Other Building Equipment Contractors	100	
238310	Drywall and Insulation Contractors	100	
238320	Painting and Wall Covering Contractors	100	
238330	Flooring Contractors	100	
238340	Tile and Terrazzo Contractors	100	
238350	Finish Carpentry Contractors	100	
238390	Other Building Finishing Contractors	100	
238910	Site Preparation Contractors	100	
238990	All Other Specialty Trade Contractors	100	
Except,	Building and Property Specialty Trade Services [3]	[3] 100	
Sectors 31—33—Manufacturing			
Subsector 311—Food Manufacturing			
311111	Dog and Cat Food Manufacturing	500	
311119	Other Animal Food Manufacturing	500	
311211	Flour Milling	500	
311212	Rice Milling	500	
311213	Malt Manufacturing	500	
311221	Wet Corn Milling	750	
311222	Soybean Processing	500	
311223	Other Oilseed Processing	1,000	
311225	Fats and Oils Refining and Blending	1,000	
311230	Breakfast Cereal Manufacturing	1,000	
311311	Sugarcane Mills	500	
311312	Cane Sugar Refining	750	
311313	Beet Sugar Manufacturing	750	
311320	Chocolate and Confectionery Manufacturing from Cacao Beans	500	
311330	Confectionery Manufacturing from Purchased Chocolate	500	
311340	Non-Chocolate Confectionery Manufacturing	500	
311411	Frozen Fruit, Juice and Vegetable Manufacturing	500	
311412	Frozen Specialty Food Manufacturing	500	
311421	Fruit and Vegetable Canning [4]	[4] 500	
311422	Specialty Canning	1,000	
311423	Dried and Dehydrated Food Manufacturing	500	
311511	Fluid Milk Manufacturing	500	
311512	Creamery Butter Manufacturing	500	
311513	Cheese Manufacturing	500	
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing	500	
311520	Ice Cream and Frozen Dessert Manufacturing	500	
311611	Animal (except Poultry) Slaughtering	500	
311612	Meat Processed from Carcasses	500	
311613	Rendering and Meat By-product Processing	500	
311615	Poultry Processing	500	
311711	Seafood Canning	500	
311712	Fresh and Frozen Seafood Processing	500	
311811	Retail Bakeries	500	
311812	Commercial Bakeries	500	
311813	Frozen Cakes, Pies, and Other Pastries Manufacturing	500	
311821	Cookie and Cracker Manufacturing	750	
311822	Flour Mixes and Dough Manufacturing from Purchased Flour	500	
311823	Dry Pasta Manufacturing	500	
311830	Tortilla Manufacturing	500	

NAICS codes	NAICS U.S. industry title	Size standards in number of employees	Maximum average annual receipts ($ million)
311911	Roasted Nuts and Peanut Butter Manufacturing	500	
311919	Other Snack Food Manufacturing	500	
311920	Coffee and Tea Manufacturing	500	
311930	Flavoring Syrup and Concentrate Manufacturing	500	
311941	Mayonnaise, Dressing and Other Prepared Sauce Manufacturing	500	
311942	Spice and Extract Manufacturing	500	
311991	Perishable Prepared Food Manufacturing	500	
311999	All Other Miscellaneous Food Manufacturing	500	
Subsector 312—Beverage and Tobacco Product Manufacturing			
312111	Soft Drink Manufacturing	500	
312112	Bottled Water Manufacturing	500	
312113	Ice Manufacturing	500	
312120	Breweries	500	
312130	Wineries	500	
312140	Distilleries	750	
312210	Tobacco Stemming and Redrying	500	
312221	Cigarette Manufacturing	1,000	
312229	Other Tobacco Product Manufacturing	500	
Subsector 313—Textile Mills			
313111	Yarn Spinning Mills	500	
313112	Yarn Texturizing, Throwing and Twisting Mills	500	
313113	Thread Mills	500	
313210	Broadwoven Fabric Mills	1,000	
313221	Narrow Fabric Mills	500	
313222	Schiffli Machine Embroidery	500	
313230	Nonwoven Fabric Mills	500	
313241	Weft Knit Fabric Mills	500	
313249	Other Knit Fabric and Lace Mills	500	
313311	Broadwoven Fabric Finishing Mills	1,000	
313312	Textile and Fabric Finishing (except Broadwoven Fabric) Mills	500	
313320	Fabric Coating Mills	1,000	
Subsector 314—Textile Product Mills			
314110	Carpet and Rug Mills	500	
314121	Curtain and Drapery Mills	500	
314129	Other Household Textile Product Mills	500	
314911	Textile Bag Mills	500	
314912	Canvas and Related Product Mills	500	
314991	Rope, Cordage and Twine Mills	500	
314992	Tire Cord and Tire Fabric Mills	1,000	
314999	All Other Miscellaneous Textile Product Mills	500	
Subsector 315—Apparel Manufacturing			
315111	Sheer Hosiery Mills	500	
315119	Other Hosiery and Sock Mills	500	
315191	Outerwear Knitting Mills	500	
315192	Underwear and Nightwear Knitting Mills	500	
315211	Men's and Boys' Cut and Sew Apparel Contractors	500	
315212	Women's, Girls', and Infants' Cut and Sew Apparel Contractors	500	
315221	Men's and Boys' Cut and Sew Underwear and Nightwear Manufacturing	500	
315222	Men's and Boys' Cut and Sew Suit, Coat and Overcoat Manufacturing	500	
315223	Men's and Boys' Cut and Sew Shirt (except Work Shirt) Manufacturing	500	
315224	Men's and Boys' Cut and Sew Trouser, Slack and Jean Manufacturing	500	
315225	Men's and Boys' Cut and Sew Work Clothing Manufacturing	500	
315228	Men's and Boys' Cut and Sew Other Outerwear Manufacturing	500	
315231	Women's and Girls' Cut and Sew Lingerie, Loungewear and Nightwear Manufacturing	500	
315232	Women's and Girls' Cut and Sew Blouse and Shirt Manufacturing	500	
315233	Women's and Girls' Cut and Sew Dress Manufacturing	500	
315234	Women's and Girls' Cut and Sew Suit, Coat, Tailored Jacket and Skirt Manufacturing	500	
315239	Women's and Girls' Cut and Sew Other Outerwear Manufacturing	500	
315291	Infants' Cut and Sew Apparel Manufacturing	500	
315292	Fur and Leather Apparel Manufacturing	500	
315299	All Other Cut and Sew Apparel Manufacturing	500	
315991	Hat, Cap and Millinery Manufacturing	500	
315992	Glove and Mitten Manufacturing	500	

NAICS codes	NAICS U.S. industry title	Size standards in number of employees	Maximum average annual receipts ($ million)
315993	Men's and Boys' Neckwear Manufacturing	500	
315999	Other Apparel Accessories and Other Apparel Manufacturing	500	
Subsector 316—Leather and Allied Product Manufacturing			
316110	Leather and Hide Tanning and Finishing	500	
316211	Rubber and Plastics Footwear Manufacturing	1,000	
316212	House Slipper Manufacturing	500	
316213	Men's Footwear (except Athletic) Manufacturing	500	
316214	Women's Footwear (except Athletic) Manufacturing	500	
316219	Other Footwear Manufacturing	500	
316991	Luggage Manufacturing	500	
316992	Women's Handbag and Purse Manufacturing	500	
316993	Personal Leather Good (except Women's Handbag and Purse) Manufacturing	500	
316999	All Other Leather Good Manufacturing	500	
Subsector 321—Wood Product Manufacturing			
321113	Sawmills	500	
321114	Wood Preservation	500	
321211	Hardwood Veneer and Plywood Manufacturing	500	
321212	Softwood Veneer and Plywood Manufacturing	500	
321213	Engineered Wood Member (except Truss) Manufacturing	500	
321214	Truss Manufacturing	500	
321219	Reconstituted Wood Product Manufacturing	500	
321911	Wood Window and Door Manufacturing	500	
321912	Cut Stock, Resawing Lumber, and Planing	500	
321918	Other Millwork (including Flooring)	500	
321920	Wood Container and Pallet Manufacturing	500	
321991	Manufactured Home (Mobile Home) Manufacturing	500	
321992	Prefabricated Wood Building Manufacturing	500	
321999	All Other Miscellaneous Wood Product Manufacturing	500	
Subsector 322—Paper Manufacturing			
322110	Pulp Mills	750	
322121	Paper (except Newsprint) Mills	750	
322122	Newsprint Mills	750	
322130	Paperboard Mills	750	
322211	Corrugated and Solid Fiber Box Manufacturing	500	
322212	Folding Paperboard Box Manufacturing	750	
322213	Setup Paperboard Box Manufacturing	500	
322214	Fiber Can, Tube, Drum, and Similar Products Manufacturing	500	
322215	Non-Folding Sanitary Food Container Manufacturing	750	
322221	Coated and Laminated Packaging Paper and Plastics Film Manufacturing	500	
322222	Coated and Laminated Paper Manufacturing	500	
322223	Plastics, Foil, and Coated Paper Bag Manufacturing	500	
322224	Uncoated Paper and Multiwall Bag Manufacturing	500	
322225	Laminated Aluminum Foil Manufacturing for Flexible Packaging Uses	500	
322226	Surface-Coated Paperboard Manufacturing	500	
322231	Die-Cut Paper and Paperboard Office Supplies Manufacturing	500	
322232	Envelope Manufacturing	500	
322233	Stationery, Tablet, and Related Product Manufacturing	500	
322291	Sanitary Paper Product Manufacturing	500	
322299	All Other Converted Paper Product Manufacturing	500	
Subsector 323—Printing and Related Support Activities			
323110	Commercial Lithographic Printing	500	
323111	Commercial Gravure Printing	500	
323112	Commercial Flexographic Printing	500	
323113	Commercial Screen Printing	500	
323114	Quick Printing	500	
323115	Digital Printing	500	
323116	Manifold Business Forms Printing	500	
323117	Books Printing	500	
323118	Blankbook, Loose-leaf Binder and Device Manufacturing	500	
323119	Other Commercial Printing	500	
323121	Tradebinding and Related Work	500	
323122	Prepress Services	500	

NAICS codes	NAICS U.S. industry title	Size standards in number of employees	Maximum average annual receipts ($ million)
Subsector 324—Petroleum and Coal Products Manufacturing			
324110	Petroleum Refineries [5]	[5] 1,500	
324121	Asphalt Paving Mixture and Block Manufacturing	500	
324122	Asphalt Shingle and Coating Materials Manufacturing	750	
324191	Petroleum Lubricating Oil and Grease Manufacturing	500	
324199	All Other Petroleum and Coal Products Manufacturing	500	
Subsector 325—Chemical Manufacturing			
325110	Petrochemical Manufacturing	1,000	
325120	Industrial Gas Manufacturing	1,000	
325131	Inorganic Dye and Pigment Manufacturing	1,000	
325132	Synthetic Organic Dye and Pigment Manufacturing	750	
325181	Alkalies and Chlorine Manufacturing	1,000	
325182	Carbon Black Manufacturing	500	
325188	All Other Basic Inorganic Chemical Manufacturing	1,000	
325191	Gum and Wood Chemical Manufacturing	500	
325192	Cyclic Crude and Intermediate Manufacturing	750	
325193	Ethyl Alcohol Manufacturing	1,000	
325199	All Other Basic Organic Chemical Manufacturing	1,000	
325211	Plastics Material and Resin Manufacturing	750	
325212	Synthetic Rubber Manufacturing	1,000	
325221	Cellulosic Organic Fiber Manufacturing	1,000	
325222	Noncellulosic Organic Fiber Manufacturing	1,000	
325311	Nitrogenous Fertilizer Manufacturing	1,000	
325312	Phosphatic Fertilizer Manufacturing	500	
325314	Fertilizer (Mixing Only) Manufacturing	500	
325320	Pesticide and Other Agricultural Chemical Manufacturing	500	
325411	Medicinal and Botanical Manufacturing	750	
325412	Pharmaceutical Preparation Manufacturing	750	
325413	In-Vitro Diagnostic Substance Manufacturing	500	
325414	Biological Product (except Diagnostic) Manufacturing	500	
325510	Paint and Coating Manufacturing	500	
325520	Adhesive Manufacturing	500	
325611	Soap and Other Detergent Manufacturing	750	
325612	Polish and Other Sanitation Good Manufacturing	500	
325613	Surface Active Agent Manufacturing	500	
325620	Toilet Preparation Manufacturing	500	
325910	Printing Ink Manufacturing	500	
325920	Explosives Manufacturing	750	
325991	Custom Compounding of Purchased Resins	500	
325992	Photographic Film, Paper, Plate and Chemical Manufacturing	500	
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing	500	
Subsector 326—Plastics and Rubber Products Manufacturing			
326111	Unsupported Plastics Bag Manufacturing	500	
326112	Unsupported Plastics Packaging Film and Sheet Manufacturing	500	
326113	Unsupported Plastics Film and Sheet (except Packaging) Manufacturing	500	
326121	Unsupported Plastics Profile Shapes Manufacturing	500	
326122	Plastics Pipe and Pipe Fitting Manufacturing	500	
326130	Laminated Plastics Plate, Sheet and Shape Manufacturing	500	
326140	Polystyrene Foam Product Manufacturing	500	
326150	Urethane and Other Foam Product (except Polystyrene) Manufacturing	500	
326160	Plastics Bottle Manufacturing	500	
326191	Plastics Plumbing Fixture Manufacturing	500	
326192	Resilient Floor Covering Manufacturing	750	
326199	All Other Plastics Product Manufacturing	500	
326211	Tire Manufacturing (except Retreading)	1,000	
326212	Tire Retreading	500	
326220	Rubber and Plastics Hoses and Belting Manufacturing	500	
326291	Rubber Product Manufacturing for Mechanical Use	500	
326299	All Other Rubber Product Manufacturing	500	
Subsector 327—Nonmetallic Mineral Product Manufacturing			
327111	Vitreous China Plumbing Fixture and China and Earthenware Bathroom Accessories Manufacturing	750	
327112	Vitreous China, Fine Earthenware and Other Pottery Product Manufacturing	500	
327113	Porcelain Electrical Supply Manufacturing	500	

NAICS codes	NAICS U.S. industry title	Size standards in number of employees	Maximum average annual receipts ($ million)
327121	Brick and Structural Clay Tile Manufacturing	500	
327122	Ceramic Wall and Floor Tile Manufacturing	500	
327123	Other Structural Clay Product Manufacturing	500	
327124	Clay Refractory Manufacturing	500	
327125	Nonclay Refractory Manufacturing	750	
327211	Flat Glass Manufacturing	1,000	
327212	Other Pressed and Blown Glass and Glassware Manufacturing	750	
327213	Glass Container Manufacturing	750	
327215	Glass Product Manufacturing Made of Purchased Glass	500	
327310	Cement Manufacturing	750	
327320	Ready-Mix Concrete Manufacturing	500	
327331	Concrete Block and Brick Manufacturing	500	
327332	Concrete Pipe Manufacturing	500	
327390	Other Concrete Product Manufacturing	500	
327410	Lime Manufacturing	500	
327420	Gypsum Product Manufacturing	1,000	
327910	Abrasive Product Manufacturing	500	
327991	Cut Stone and Stone Product Manufacturing	500	
327992	Ground or Treated Mineral and Earth Manufacturing	500	
327993	Mineral Wool Manufacturing	750	
327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing	500	
Subsector 331—Primary Metal Manufacturing			
331111	Iron and Steel Mills	1,000	
331112	Electrometallurgical Ferroalloy Product Manufacturing	750	
331210	Iron and Steel Pipe and Tube Manufacturing from Purchased Steel	1,000	
331221	Cold-Rolled Steel Shape Manufacturing	1,000	
331222	Steel Wire Drawing	1,000	
331311	Alumina Refining	1,000	
331312	Primary Aluminum Production	1,000	
331314	Secondary Smelting and Alloying of Aluminum	750	
331315	Aluminum Sheet, Plate and Foil Manufacturing	750	
331316	Aluminum Extruded Product Manufacturing	750	
331319	Other Aluminum Rolling and Drawing	750	
331411	Primary Smelting and Refining of Copper	1,000	
331419	Primary Smelting and Refining of Nonferrous Metal (except Copper and Aluminum)	750	
331421	Copper Rolling, Drawing and Extruding	750	
331422	Copper Wire (except Mechanical) Drawing	1,000	
331423	Secondary Smelting, Refining, and Alloying of Copper	750	
331491	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing and Extruding	750	
331492	Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum)	750	
331511	Iron Foundries	500	
331512	Steel Investment Foundries	500	
331513	Steel Foundries (except Investment)	500	
331521	Aluminum Die-Casting Foundries	500	
331522	Nonferrous (except Aluminum) Die-Casting Foundries	500	
331524	Aluminum Foundries (except Die-Casting)	500	
331525	Copper Foundries (except Die-Casting)	500	
331528	Other Nonferrous Foundries (except Die-Casting)	500	
Subsector 332—Fabricated Metal Product Manufacturing			
332111	Iron and Steel Forging	500	
332112	Nonferrous Forging	500	
332114	Custom Roll Forming	500	
332115	Crown and Closure Manufacturing	500	
332116	Metal Stamping	500	
332117	Powder Metallurgy Part Manufacturing	500	
332211	Cutlery and Flatware (except Precious) Manufacturing	500	
332212	Hand and Edge Tool Manufacturing	500	
332213	Saw Blade and Handsaw Manufacturing	500	
332214	Kitchen Utensil, Pot and Pan Manufacturing	500	
332311	Prefabricated Metal Building and Component Manufacturing	500	
332312	Fabricated Structural Metal Manufacturing	500	
332313	Plate Work Manufacturing	500	
332321	Metal Window and Door Manufacturing	500	
332322	Sheet Metal Work Manufacturing	500	
332323	Ornamental and Architectural Metal Work Manufacturing	500	
332410	Power Boiler and Heat Exchanger Manufacturing	500	

NAICS codes	NAICS U.S. industry title	Size standards in number of employees	Maximum average annual receipts ($ million)
332420	Metal Tank (Heavy Gauge) Manufacturing	500	
332431	Metal Can Manufacturing	1,000	
332439	Other Metal Container Manufacturing	500	
332510	Hardware Manufacturing	500	
332611	Spring (Heavy Gauge) Manufacturing	500	
332612	Spring (Light Gauge) Manufacturing	500	
332618	Other Fabricated Wire Product Manufacturing	500	
332710	Machine Shops	500	
332721	Precision Turned Product Manufacturing	500	
332722	Bolt, Nut, Screw, Rivet and Washer Manufacturing	500	
332811	Metal Heat Treating	750	
332812	Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers	500	
332813	Electroplating, Plating, Polishing, Anodizing and Coloring	500	
332911	Industrial Valve Manufacturing	500	
332912	Fluid Power Valve and Hose Fitting Manufacturing	500	
332913	Plumbing Fixture Fitting and Trim Manufacturing	500	
332919	Other Metal Valve and Pipe Fitting Manufacturing	500	
332991	Ball and Roller Bearing Manufacturing	750	
332992	Small Arms Ammunition Manufacturing	1,000	
332993	Ammunition (except Small Arms) Manufacturing	1,500	
332994	Small Arms Manufacturing	1,000	
332995	Other Ordnance and Accessories Manufacturing	500	
332996	Fabricated Pipe and Pipe Fitting Manufacturing	500	
332997	Industrial Pattern Manufacturing	500	
332998	Enameled Iron and Metal Sanitary Ware Manufacturing	750	
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing	500	
Subsector 333—Machinery Manufacturing [6]			
333111	Farm Machinery and Equipment Manufacturing	500	
333112	Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing	500	
333120	Construction Machinery Manufacturing	750	
333131	Mining Machinery and Equipment Manufacturing	500	
333132	Oil and Gas Field Machinery and Equipment Manufacturing	500	
333210	Sawmill and Woodworking Machinery Manufacturing	500	
333220	Plastics and Rubber Industry Machinery Manufacturing	500	
333291	Paper Industry Machinery Manufacturing	500	
333292	Textile Machinery Manufacturing	500	
333293	Printing Machinery and Equipment Manufacturing	500	
333294	Food Product Machinery Manufacturing	500	
333295	Semiconductor Machinery Manufacturing	500	
333298	All Other Industrial Machinery Manufacturing	500	
333311	Automatic Vending Machine Manufacturing	500	
333312	Commercial Laundry, Drycleaning and Pressing Machine Manufacturing	500	
333313	Office Machinery Manufacturing	1,000	
333314	Optical Instrument and Lens Manufacturing	500	
333315	Photographic and Photocopying Equipment Manufacturing	500	
333319	Other Commercial and Service Industry Machinery Manufacturing	500	
333411	Air Purification Equipment Manufacturing	500	
333412	Industrial and Commercial Fan and Blower Manufacturing	500	
333414	Heating Equipment (except Warm Air Furnaces) Manufacturing	500	
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing	750	
333511	Industrial Mold Manufacturing	500	
333512	Machine Tool (Metal Cutting Types) Manufacturing	500	
333513	Machine Tool (Metal Forming Types) Manufacturing	500	
333514	Special Die and Tool, Die Set, Jig and Fixture Manufacturing	500	
333515	Cutting Tool and Machine Tool Accessory Manufacturing	500	
333516	Rolling Mill Machinery and Equipment Manufacturing	500	
333518	Other Metalworking Machinery Manufacturing	500	
333611	Turbine and Turbine Generator Set Unit Manufacturing	1,000	
333612	Speed Changer, Industrial High-Speed Drive and Gear Manufacturing	500	
333613	Mechanical Power Transmission Equipment Manufacturing	500	
333618	Other Engine Equipment Manufacturing	1,000	
333911	Pump and Pumping Equipment Manufacturing	500	
333912	Air and Gas Compressor Manufacturing	500	
333913	Measuring and Dispensing Pump Manufacturing	500	
333921	Elevator and Moving Stairway Manufacturing	500	
333922	Conveyor and Conveying Equipment Manufacturing	500	
333923	Overhead Traveling Crane, Hoist and Monorail System Manufacturing	500	

NAICS codes	NAICS U.S. industry title	Size standards in number of employees	Maximum average annual receipts ($ million)
333924	Industrial Truck, Tractor, Trailer and Stacker Machinery Manufacturing	750	
333991	Power-Driven Hand Tool Manufacturing	500	
333992	Welding and Soldering Equipment Manufacturing	500	
333993	Packaging Machinery Manufacturing	500	
333994	Industrial Process Furnace and Oven Manufacturing	500	
333995	Fluid Power Cylinder and Actuator Manufacturing	500	
333996	Fluid Power Pump and Motor Manufacturing	500	
333997	Scale and Balance (except Laboratory) Manufacturing	500	
333999	All Other Miscellaneous General Purpose Machinery Manufacturing	500	
Subsector 334—Computer and Electronic Product Manufacturing [6]			
334111	Electronic Computer Manufacturing	1,000	
334112	Computer Storage Device Manufacturing	1,000	
334113	Computer Terminal Manufacturing	1,000	
334119	Other Computer Peripheral Equipment Manufacturing	1,000	
334210	Telephone Apparatus Manufacturing	1,000	
334220	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing	750	
334290	Other Communications Equipment Manufacturing	750	
334310	Audio and Video Equipment Manufacturing	750	
334411	Electron Tube Manufacturing	750	
334412	Bare Printed Circuit Board Manufacturing	500	
334413	Semiconductor and Related Device Manufacturing	500	
334414	Electronic Capacitor Manufacturing	500	
334415	Electronic Resistor Manufacturing	500	
334416	Electronic Coil, Transformer, and Other Inductor Manufacturing	500	
334417	Electronic Connector Manufacturing	500	
334418	Printed Circuit Assembly (Electronic Assembly) Manufacturing	500	
334419	Other Electronic Component Manufacturing	500	
334510	Electromedical and Electrotherapeutic Apparatus Manufacturing	500	
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing	750	
334512	Automatic Environmental Control Manufacturing for Residential, Commercial and Appliance Use	500	
334513	Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables	500	
334514	Totalizing Fluid Meter and Counting Device Manufacturing	500	
334515	Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals	500	
334516	Analytical Laboratory Instrument Manufacturing	500	
334517	Irradiation Apparatus Manufacturing	500	
334518	Watch, Clock, and Part Manufacturing	500	
334519	Other Measuring and Controlling Device Manufacturing	500	
334611	Software Reproducing	500	
334612	Prerecorded Compact Disc (except Software), Tape, and Record Reproducing	750	
334613	Magnetic and Optical Recording Media Manufacturing	1,000	
Subsector 335—Electrical Equipment, Appliance and Component Manufacturing [6]			
335110	Electric Lamp Bulb and Part Manufacturing	1,000	
335121	Residential Electric Lighting Fixture Manufacturing	500	
335122	Commercial, Industrial and Institutional Electric Lighting Fixture Manufacturing	500	
335129	Other Lighting Equipment Manufacturing	500	
335211	Electric Housewares and Household Fan Manufacturing	750	
335212	Household Vacuum Cleaner Manufacturing	750	
335221	Household Cooking Appliance Manufacturing	750	
335222	Household Refrigerator and Home Freezer Manufacturing	1,000	
335224	Household Laundry Equipment Manufacturing	1,000	
335228	Other Major Household Appliance Manufacturing	500	
335311	Power, Distribution and Specialty Transformer Manufacturing	750	
335312	Motor and Generator Manufacturing	1,000	
335313	Switchgear and Switchboard Apparatus Manufacturing	750	
335314	Relay and Industrial Control Manufacturing	750	
335911	Storage Battery Manufacturing	500	
335912	Primary Battery Manufacturing	1,000	
335921	Fiber Optic Cable Manufacturing	1,000	
335929	Other Communication and Energy Wire Manufacturing	1,000	
335931	Current-Carrying Wiring Device Manufacturing	500	
335932	Noncurrent-Carrying Wiring Device Manufacturing	500	
335991	Carbon and Graphite Product Manufacturing	750	
335999	All Other Miscellaneous Electrical Equipment and Component Manufacturing	500	

NAICS codes	NAICS U.S. industry title	Size standards in number of employees	Maximum average annual receipts ($ million)
Subsector 336—Transportation Equipment Manufacturing[7]			
336111	Automobile Manufacturing	1,000	
336112	Light Truck and Utility Vehicle Manufacturing	1,000	
336120	Heavy Duty Truck Manufacturing	1,000	
336211	Motor Vehicle Body Manufacturing	1,000	
336212	Truck Trailer Manufacturing	500	
336213	Motor Home Manufacturing	1,000	
336214	Travel Trailer and Camper Manufacturing	500	
336311	Carburetor, Piston, Piston Ring and Valve Manufacturing	500	
336312	Gasoline Engine and Engine Parts Manufacturing	750	
336321	Vehicular Lighting Equipment Manufacturing	500	
336322	Other Motor Vehicle Electrical and Electronic Equipment Manufacturing	750	
336330	Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing	750	
336340	Motor Vehicle Brake System Manufacturing	750	
336350	Motor Vehicle Transmission and Power Train Parts Manufacturing	750	
336360	Motor Vehicle Seating and Interior Trim Manufacturing	500	
336370	Motor Vehicle Metal Stamping	500	
336391	Motor Vehicle Air-Conditioning Manufacturing	750	
336399	All Other Motor Vehicle Parts Manufacturing	750	
336411	Aircraft Manufacturing	1,500	
336412	Aircraft Engine and Engine Parts Manufacturing	1,000	
336413	Other Aircraft Part and Auxiliary Equipment Manufacturing[7]	[7] 1,000	
336414	Guided Missile and Space Vehicle Manufacturing	1,000	
336415	Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing	1,000	
336419	Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing	1,000	
336510	Railroad Rolling Stock Manufacturing	1,000	
336611	Ship Building and Repairing	1,000	
336612	Boat Building	500	
336991	Motorcycle, Bicycle and Parts Manufacturing	500	
336992	Military Armored Vehicle, Tank and Tank Component Manufacturing	1,000	
336999	All Other Transportation Equipment Manufacturing	500	
Subsector 337—Furniture and Related Product Manufacturing			
337110	Wood Kitchen Cabinet and Counter Top Manufacturing	500	
337121	Upholstered Household Furniture Manufacturing	500	
337122	Nonupholstered Wood Household Furniture Manufacturing	500	
337124	Metal Household Furniture Manufacturing	500	
337125	Household Furniture (except Wood and Metal) Manufacturing	500	
337127	Institutional Furniture Manufacturing	500	
337129	Wood Television, Radio, and Sewing Machine Cabinet Manufacturing	500	
337211	Wood Office Furniture Manufacturing	500	
337212	Custom Architectural Woodwork and Millwork Manufacturing	500	
337214	Office Furniture (except Wood) Manufacturing	500	
337215	Showcase, Partition, Shelving, and Locker Manufacturing	500	
337910	Mattress Manufacturing	500	
337920	Blind and Shade Manufacturing	500	
Subsector 339—Miscellaneous Manufacturing			
339111	Laboratory Apparatus and Furniture Manufacturing	500	
339112	Surgical and Medical Instrument Manufacturing	500	
339113	Surgical Appliance and Supplies Manufacturing	500	
339114	Dental Equipment and Supplies Manufacturing	500	
339115	Ophthalmic Goods Manufacturing	500	
339116	Dental Laboratories	500	
339911	Jewelry (except Costume) Manufacturing	500	
339912	Silverware and Hollowware Manufacturing	500	
339913	Jewelers' Material and Lapidary Work Manufacturing	500	
339914	Costume Jewelry and Novelty Manufacturing	500	
339920	Sporting and Athletic Goods Manufacturing	500	
339931	Doll and Stuffed Toy Manufacturing	500	
339932	Game, Toy, and Children's Vehicle Manufacturing	500	
339941	Pen and Mechanical Pencil Manufacturing	500	
339942	Lead Pencil and Art Good Manufacturing	500	
339943	Marking Device Manufacturing	500	
339944	Carbon Paper and Inked Ribbon Manufacturing	500	
339950	Sign Manufacturing	500	
339991	Gasket, Packing, and Sealing Device Manufacturing	500	
339992	Musical Instrument Manufacturing	500	

NAICS codes	NAICS U.S. industry title	Size standards in number of employees	Maximum average annual receipts ($ million)
339993	Fastener, Button, Needle and Pin Manufacturing	500	
339994	Broom, Brush and Mop Manufacturing	500	
339995	Burial Casket Manufacturing	500	
339999	All Other Miscellaneous Manufacturing	500	
	Sector 42—Wholesale Trade		
	Subsector 423—Merchant Wholesalers, Durable Goods		
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	100	
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers	100	
423130	Tire and Tube Merchant Wholesalers	100	
423140	Motor Vehicle Parts (Used) Merchant Wholesalers	100	
423210	Furniture Merchant Wholesalers	100	
423220	Home Furnishing Merchant Wholesalers	100	
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	100	
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	100	
423330	Roofing, Siding, and Insulation Material Merchant Wholesalers	100	
423390	Other Construction Material Merchant Wholesalers	100	
423410	Photographic Equipment and Supplies Merchant Wholesalers	100	
423420	Office Equipment Merchant Wholesalers	100	
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	100	
423440	Other Commercial Equipment Merchant Wholesalers	100	
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers	100	
423460	Ophthalmic Goods Merchant Wholesalers	100	
423490	Other Professional Equipment and Supplies Merchant Wholesalers	100	
423510	Metal Service Centers and Other Metal Merchant Wholesalers	100	
423520	Coal and Other Mineral and Ore Merchant Wholesalers	100	
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	100	
423620	Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers	100	
423690	Other Electronic Parts and Equipment Merchant Wholesalers	100	
423710	Hardware Merchant Wholesalers	100	
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	100	
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers	100	
423740	Refrigeration Equipment and Supplies Merchant Wholesalers	100	
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers	100	
423820	Farm and Garden Machinery and Equipment Merchant Wholesalers	100	
423830	Industrial Machinery and Equipment Merchant Wholesalers	100	
423840	Industrial Supplies Merchant Wholesalers	100	
423850	Service Establishment Equipment and Supplies Merchant Wholesalers	100	
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers	100	
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers	100	
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers	100	
423930	Recyclable Material Merchant Wholesalers	100	
423940	Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers	100	
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	100	
	Subsector 424—Merchant Wholesalers, Nondurable Goods		
424110	Printing and Writing Paper Merchant Wholesalers	100	
424120	Stationary and Office Supplies Merchant Wholesalers	100	
424130	Industrial and Personal Service Paper Merchant Wholesalers	100	
424210	Drugs and Druggists' Sundries Merchant Wholesalers	100	
424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers	100	
424320	Men's and Boys' Clothing and Furnishings Merchant Wholesalers	100	
424330	Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers	100	
424340	Footwear Merchant Wholesalers	100	
424410	General Line Grocery Merchant Wholesalers	100	
424420	Packaged Frozen Food Merchant Wholesalers	100	
424430	Dairy Product (except Dried or Canned) Merchant Wholesalers	100	
424440	Poultry and Poultry Product Merchant Wholesalers	100	
424450	Confectionery Merchant Wholesalers	100	
424460	Fish and Seafood Merchant Wholesalers	100	
424470	Meat and Meat Product Merchant Wholesalers	100	
424480	Fresh Fruit and Vegetable Merchant Wholesalers	100	
424490	Other Grocery and Related Products Merchant Wholesalers	100	
424510	Grain and Field Bean Merchant Wholesalers	100	
424520	Livestock Merchant Wholesalers	100	
424590	Other Farm Product Raw Material Merchant Wholesalers	100	
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	100	

NAICS codes	NAICS U.S. industry title	Size standards in number of employees	Maximum average annual receipts ($ million)
424690	Other Chemical and Allied Products Merchant Wholesalers	100	
424710	Petroleum Bulk Stations and Terminals	100	
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	100	
424810	Beer and Ale Merchant Wholesalers	100	
424820	Wine and Distilled Alcoholic Beverage Merchant Wholesalers	100	
424910	Farm Supplies Merchant Wholesalers	100	
424920	Book, Periodical, and Newspaper Merchant Wholesalers	100	
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers	100	
424940	Tobacco and Tobacco Product Merchant Wholesalers	100	
424950	Paint, Varnish, and Supplies Merchant Wholesalers	100	
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers	100	
Subsector 425—Wholesale Electronic Markets and Agents and Brokers			
425110	Business to Business Electronic Markets	100	
425120	Wholesale Trade Agents and Brokers	100	
Sectors 44–45—Retail Trade			
Subsector 441—Motor Vehicle and Parts Dealers			
441110	New Car Dealers	50	
441120	Used Car Dealers	50	
441210	Recreational Vehicle Dealers	50	
441221	Motorcycle Dealers	50	
441222	Boat Dealers	50	
441229	All Other Motor Vehicle Dealers	50	
441310	Automotive Parts and Accessories Stores	50	
441320	Tire Dealers	50	
Subsector 442—Furniture and Home Furnishings Stores			
442110	Furniture Stores	50	
442210	Floor Covering Stores	50	
442291	Window Treatment Stores	50	
442299	All Other Home Furnishings Stores	50	
Subsector 443—Electronics and Appliance Stores			
443111	Household Appliance Stores	50	
443112	Radio, Television and Other Electronics Stores	50	
443120	Computer and Software Stores	50	
443130	Camera and Photographic Supplies Stores	50	
Subsector 444—Building Material and Garden Equipment and Supplies Dealers			
444110	Home Centers	50	
444120	Paint and Wallpaper Stores	50	
444130	Hardware Stores	50	
444190	Other Building Material Dealers	50	
444210	Outdoor Power Equipment Stores	50	
444220	Nursery and Garden Centers	50	
Subsector 445—Food and Beverage Stores			
445110	Supermarkets and Other Grocery (except Convenience) Stores	150	
445120	Convenience Stores	150	
445210	Meat Markets	50	
445220	Fish and Seafood Markets	50	
445230	Fruit and Vegetable Markets	50	
445291	Baked Goods Stores	50	
445292	Confectionery and Nut Stores	50	
445299	All Other Specialty Food Stores	50	
445310	Beer, Wine and Liquor Stores	50	
Subsector 446—Health and Personal Care Stores			
446110	Pharmacies and Drug Stores	50	
446120	Cosmetics, Beauty Supplies and Perfume Stores	50	
446130	Optical Goods Stores	50	

NAICS codes	NAICS U.S. industry title	Size standards in number of employees	Maximum average annual receipts ($ million)
446191	Food (Health) Supplement Stores	50	
446199	All Other Health and Personal Care Stores	50	
Subsector 447—Gasoline Stations			
447110	Gasoline Stations with Convenience Stores	100	
447190	Other Gasoline Stations	50	
Subsector 448—Clothing and Clothing Accessories Stores			
448110	Men's Clothing Stores	50	
448120	Women's Clothing Stores	50	
448130	Children's and Infants' Clothing Stores	50	
448140	Family Clothing Stores	50	
448150	Clothing Accessories Stores	50	
448190	Other Clothing Stores	50	
448210	Shoe Stores	50	
448310	Jewelry Stores	50	
448320	Luggage and Leather Goods Stores	50	
Subsector 451—Sporting Good, Hobby, Book and Music Stores			
451110	Sporting Goods Stores	50	
451120	Hobby, Toy and Game Stores	50	
451130	Sewing, Needlework and Piece Goods Stores	50	
451140	Musical Instrument and Supplies Stores	50	
451211	Book Stores	50	
451212	News Dealers and Newsstands	50	
451220	Prerecorded Tape, Compact Disc and Record Stores	50	
Subsector 452—General Merchandise Stores			
452111	Department Stores (except Discount Department Stores)	150	
452112	Discount Department Stores	150	
452910	Warehouse Clubs and Superstores	150	
452990	All Other General Merchandise Stores	100	
Subsector 453—Miscellaneous Store Retailers			
453110	Florists	50	
453210	Office Supplies and Stationery Stores	50	
453220	Gift, Novelty and Souvenir Stores	50	
453310	Used Merchandise Stores	50	
453910	Pet and Pet Supplies Stores	50	
453920	Art Dealers	50	
453930	Manufactured (Mobile) Home Dealers	50	
453991	Tobacco Stores	50	
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	50	
Subsector 454—Nonstore Retailers			
454111	Electronic Shopping	50	
454112	Electronic Auctions	50	
454113	Mail-Order Houses	50	
454210	Vending Machine Operators	50	
454311	Heating Oil Dealers	50	
454312	Liquefied Petroleum Gas (Bottled Gas) Dealers	50	
454319	Other Fuel Dealers	50	
454390	Other Direct Selling Establishments	50	
Sectors 48–49—Transportation			
Subsector 481—Air Transportation			
481111	Scheduled Passenger Air Transportation	1,500	
481112	Scheduled Freight Air Transportation	1,500	
481211	Nonscheduled Chartered Passenger Air Transportation	1,500	
Except,	Offshore Marine Air Transportation Services	150	
481212	Nonscheduled Chartered Freight Air Transportation	1,500	
Except,	Offshore Marine Air Transportation Services	150	
481219	Other Nonscheduled Air Transportation	50	

NAICS codes	NAICS U.S. industry title	Size standards in number of employees	Maximum average annual receipts ($ million)
Subsector 482—Rail Transportation			
482111	Line-Haul Railroads	1,500	
482112	Short Line Railroads	500	
Subsector 483—Water Transportation [8]			
483111	Deep Sea Freight Transportation	500	
483112	Deep Sea Passenger Transportation	500	
483113	Coastal and Great Lakes Freight Transportation	500	
483114	Coastal and Great Lakes Passenger Transportation	500	
483211	Inland Water Freight Transportation	500	
483212	Inland Water Passenger Transportation	500	
Subsector 484—Truck Transportation			
484110	General Freight Trucking, Local	200	
484121	General Freight Trucking, Long-Distance, Truckload	200	
484122	General Freight Trucking, Long-Distance, Less Than Truckload	200	
484210	Used Household and Office Goods Moving	200	
484220	Specialized Freight (except Used Goods) Trucking, Local	200	
484230	Specialized Freight (except Used Goods) Trucking, Long-Distance	200	
Subsector 485—Transit and Ground Passenger Transportation			
485111	Mixed Mode Transit Systems	100	
485112	Commuter Rail Systems	100	
485113	Bus and Motor Vehicle Transit Systems	100	
485119	Other Urban Transit Systems	100	
485210	Interurban and Rural Bus Transportation	100	
485310	Taxi Service	50	
485320	Limousine Service	50	
485410	School and Employee Bus Transportation	100	
485510	Charter Bus Industry	100	
485991	Special Needs Transportation	50	
485999	All Other Transit and Ground Passenger Transportation	50	
Subsector 486—Pipeline Transportation			
486110	Pipeline Transportation of Crude Oil	1,500	
486210	Pipeline Transportation of Natural Gas	100	
486910	Pipeline Transportation of Refined Petroleum Products	1,500	
486990	All Other Pipeline Transportation	100	
Subsector 487—Scenic and Sightseeing Transportation			
487110	Scenic and Sightseeing Transportation, Land	50	
487210	Scenic and Sightseeing Transportation, Water	50	
487990	Scenic and Sightseeing Transportation, Other	50	
Subsector 488—Support Activities for Transportation			
488111	Air Traffic Control	50	
488119	Other Airport Operations	100	
488190	Other Support Activities for Air Transportation	100	
488210	Support Activities for Rail Transportation	50	
488310	Port and Harbor Operations	200	
488320	Marine Cargo Handling	200	
488330	Navigational Services to Shipping	50	
488390	Other Support Activities for Water Transportation	50	
488410	Motor Vehicle Towing	50	
488490	Other Support Activities for Road Transportation	50	
488510	Freight Transportation Arrangement	50	
488991	Packing and Crating	100	
488999	All Other Support Activities for Transportation	50	
Subsector 491—Postal Service			
491110	Postal Service	50	
Subsector 492—Couriers and Messengers			

NAICS codes	NAICS U.S. industry title	Size standards in number of employees	Maximum average annual receipts ($ million)
492110	Couriers	1,500	
492210	Local Messengers and Local Delivery	200	
Subsector 493—Warehousing and Storage			
493110	General Warehousing and Storage	200	
493120	Refrigerated Warehousing and Storage	200	
493130	Farm Product Warehousing and Storage	200	
493190	Other Warehousing and Storage	200	
Sector 51—Information			
Subsector 511—Publishing Industries (except Internet)			
511110	Newspaper Publishers	500	
511120	Periodical Publishers	500	
511130	Book Publishers	500	
511140	Directory and Mailing List Publishers	500	
511191	Greeting Card Publishers	500	
511199	All Other Publishers	500	
511210	Software Publishers	150	
Subsector 512—Motion Picture and Sound Recording Industries			
512110	Motion Picture and Video Production	100	
512120	Motion Picture and Video Distribution	100	
512131	Motion Picture Theaters (except Drive-Ins)	100	
512132	Drive-In Motion Picture Theaters	50	
512191	Teleproduction and Other Postproduction Services	100	
512199	Other Motion Picture and Video Industries	50	
512210	Record Production	50	
512220	Integrated Record Production/Distribution	750	
512230	Music Publishers	500	
512240	Sound Recording Studios	50	
512290	Other Sound Recording Industries	50	
Subsector 515—Broadcasting (except Internet)			
515111	Radio Networks	50	
515112	Radio Stations	50	
515120	Television Broadcasting	100	
515210	Cable and Other Subscription Programming	100	
Subsector 516—Internet Publishing and Broadcasting			
516110	Internet Publishing and Broadcasting	500	
Subsector 517—Telecommunications			
517110	Wired Telecommunications Carriers	1,500	
517211	Paging	1,500	
517212	Cellular and Other Wireless Telecommunications	1,500	
517310	Telecommunications Resellers	1,500	
517410	Satellite Telecommunications	100	
517510	Cable and Other Program Distribution	100	
517910	Other Telecommunications	100	
Subsector 518—Internet Service Providers, Web Search Portals, and Data Processing Services			
518111	Internet Service Providers	150	
518112	Web Search Portals	150	
518210	Data Processing, Hosting, and Related Services	150	$30.0
Subsector 519—Other Information Services			
519110	News Syndicates	50	
519120	Libraries and Archives	50	
519190	All Other Information Services	50	

NAICS codes	NAICS U.S. industry title	Size standards in number of employees	Maximum average annual receipts ($ million)
	Sector 52—Finance and Insurance		
Subsector 522—Credit Intermediation and Related Activities			
522110	Commercial Banking	50	
522120	Savings Institutions	50	
522130	Credit Unions	50	
522190	Other Depository Credit Intermediation	50	
522210	Credit Card Issuing	50	
522220	Sales Financing	50	
522291	Consumer Lending	50	
522292	Real Estate Credit	50	
522293	International Trade Financing	50	
522294	Secondary Market Financing	50	
522298	All Other Non-Depository Credit Intermediation	50	
522310	Mortgage and Nonmortgage Loan Brokers	50	
522320	Financial Transactions Processing, Reserve, and Clearing House Activities	50	
522390	Other Activities Related to Credit Intermediation	50	
Subsector 523—Financial Investments and Related Activities			
523110	Investment Banking and Securities Dealing	50	
523120	Securities Brokerage	50	
523130	Commodity Contracts Dealing	50	
523140	Commodity Contracts Brokerage	50	
523210	Securities and Commodity Exchanges	50	
523910	Miscellaneous Intermediation	50	
523920	Portfolio Management	50	
523930	Investment Advice	50	
523991	Trust, Fiduciary and Custody Activities	50	
523999	Miscellaneous Financial Investment Activities	50	
Subsector 524—Insurance Carriers and Related Activities			
524113	Direct Life Insurance Carriers	50	
524114	Direct Health and Medical Insurance Carriers	50	
524126	Direct Property and Casualty Insurance Carriers	1,500	
524127	Direct Title Insurance Carriers	50	
524128	Other Direct Insurance (except Life, Health and Medical) Carriers	50	
524130	Reinsurance Carriers	50	
524210	Insurance Agencies and Brokerages	50	
524291	Claims Adjusting	50	
524292	Third Party Administration of Insurance and Pension Funds	50	
524298	All Other Insurance Related Activities	50	
Subsector 525—Funds, Trusts and Other Financial Vehicles			
525110	Pension Funds	50	
525120	Health and Welfare Funds	50	
525190	Other Insurance Funds	50	
525910	Open-End Investment Funds	50	
525920	Trusts, Estates, and Agency Accounts	50	
525930	Real Estate Investment Trusts	50	
525990	Other Financial Vehicles	50	
	Sector 53—Real Estate and Rental and Leasing		
Subsector 531—Real Estate			
531110	Lessors of Residential Buildings and Dwellings	50	
531120	Lessors of Nonresidential Buildings (except Miniwarehouses)	50	
531130	Lessors of Miniwarehouses and Self Storage Units	150	
531190	Lessors of Other Real Estate Property	50	
Except,	Leasing of Building Space to Federal Government by Owners [9]	[9] 150	
531210	Offices of Real Estate Agents and Brokers	50	
531311	Residential Property Managers	50	
531312	Nonresidential Property Managers	50	
531320	Offices of Real Estate Appraisers	50	
531390	Other Activities Related to Real Estate	50	
Subsector 532—Rental and Leasing Services			

NAICS codes	NAICS U.S. industry title	Size standards in number of employees	Maximum average annual receipts ($ million)
532111	Passenger Car Rental	150	
532112	Passenger Car Leasing	150	
532120	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing	150	
532210	Consumer Electronics and Appliances Rental	50	
532220	Formal Wear and Costume Rental	50	
532230	Video Tape and Disc Rental	50	
532291	Home Health Equipment Rental	50	
532292	Recreational Goods Rental	50	
532299	All Other Consumer Goods Rental	50	
532310	General Rental Centers	50	
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing	50	
532412	Construction, Mining and Forestry Machinery and Equipment Rental and Leasing	50	
532420	Office Machinery and Equipment Rental and Leasing	50	
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing	50	
Subsector 533—Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)			
533110	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	50	
Sector 54—Professional, Scientific and Technical Services			
Subsector 541— Professional, Scientific and Technical Services			
541110	Offices of Lawyers	50	
541191	Title Abstract and Settlement Offices	50	
541199	All Other Legal Services	50	
541211	Offices of Certified Public Accountants	100	
541213	Tax Preparation Services	50	
541214	Payroll Services	100	
541219	Other Accounting Services	100	
541310	Architectural Services	50	$7.0
541320	Landscape Architectural Services	50	
541330	Engineering Services	50	$7.0
Except,	Military and Aerospace Equipment and Military Weapons	200	$30.0
Except,	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992	200	$30.0
Except,	Marine Engineering and Naval Architecture	150	$30.0
541340	Drafting Services	50	
541350	Building Inspection Services	50	
541360	Geophysical Surveying and Mapping Services	50	
541370	Surveying and Mapping (except Geophysical) Services	50	
541380	Testing Laboratories	100	
541410	Interior Design Services	50	
541420	Industrial Design Services	50	
541430	Graphic Design Services	50	
541490	Other Specialized Design Services	50	
541511	Custom Computer Programming Services	150	$30.0
541512	Computer Systems Design Services	150	$30.0
541513	Computer Facilities Management Services	150	$30.0
541519	Other Computer Related Services	150	$30.0
Except,	Information Technology Value Added Resellers [15]	[15] 150	
541611	Administrative Management and General Management Consulting Services	50	$10.0
541612	Human Resources and Executive Search Consulting Services	50	$10.0
541613	Marketing Consulting Services	50	$10.0
541614	Process, Physical Distribution and Logistics Consulting Services	50	$10.0
541618	Other Management Consulting Services	50	$10.0
541620	Environmental Consulting Services	50	$10.0
541690	Other Scientific and Technical Consulting Services	50	$10.0
541710	Research and Development in the Physical, Engineering, and Life Sciences [10]	[10] 500	
Except,	Aircraft	1,500	
Except,	Aircraft Parts, and Auxiliary Equipment, and Aircraft Engine Parts	1,000	
Except,	Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Units Parts, and their Auxiliary Equipment and Parts	1,000	
541720	Research and Development in the Social Sciences and Humanities	50	
541810	Advertising Agencies	50	
541820	Public Relations Agencies	50	
541830	Media Buying Agencies	50	
541840	Media Representatives	50	
541850	Display Advertising	50	
541860	Direct Mail Advertising	50	
541870	Advertising Material Distribution Services	50	

NAICS codes	NAICS U.S. industry title	Size standards in number of employees	Maximum average annual receipts ($ million)
541890	Other Services Related to Advertising	50	
541910	Marketing Research and Public Opinion Polling	50	
541921	Photography Studios, Portrait	50	
541922	Commercial Photography	50	
541930	Translation and Interpretation Services	50	
541940	Veterinary Services	50	
541990	All Other Professional, Scientific and Technical Services	50	$10.0
Sector 55—Management of Companies and Enterprises			
Subsector 551—Management of Companies and Enterprises			
551111	Offices of Bank Holding Companies	50	
551112	Offices of Other Holding Companies	50	
Sector 56—Administrative and Support, Waste Management and Remediation Services			
Subsector 561—Administrative and Support Services			
561110	Office Administrative Services	50	$10.0
561210	Facilities Support Services [11]	[11] 400	[11] $40.0
561310	Employment Placement Agencies	50	
561320	Temporary Help Services	500	
561330	Employee Leasing Services	500	
561410	Document Preparation Services	50	
561421	Telephone Answering Services	50	
561422	Telemarketing Bureaus	150	
561431	Private Mail Centers	50	
561439	Other Business Service Centers (including Copy Shops)	50	
561440	Collection Agencies	50	
561450	Credit Bureaus	50	
561491	Repossession Services	50	
561492	Court Reporting and Stenotype Services	50	
561499	All Other Business Support Services	50	
561510	Travel Agencies	50	
561520	Tour Operators	50	
561591	Convention and Visitors Bureaus	50	
561599	All Other Travel Arrangement and Reservation Services	50	
561611	Investigation Services	200	
561612	Security Guards and Patrol Services	500	
561613	Armored Car Services	200	
561621	Security Systems Services (except Locksmiths)	200	
561622	Locksmiths	50	
561710	Exterminating and Pest Control Services	50	
561720	Janitorial Services	500	
561730	Landscaping Services	50	
561740	Carpet and Upholstery Cleaning Services	50	
561790	Other Services to Buildings and Dwellings	50	
561910	Packaging and Labeling Services	50	
561920	Convention and Trade Show Organizers	50	
561990	All Other Support Services	50	
Subsector 562—Waste Management and Remediation Services			
562111	Solid Waste Collection	100	
562112	Hazardous Waste Collection	100	
562119	Other Waste Collection	100	
562211	Hazardous Waste Treatment and Disposal	100	
562212	Solid Waste Landfill	100	
562213	Solid Waste Combustors and Incinerators	100	
562219	Other Nonhazardous Waste Treatment and Disposal	100	
562910	Remediation Services	100	
Except,	Environmental Remediation Services [12]	[12] 500	
562920	Materials Recovery Facilities	100	
562991	Septic Tank and Related Services	50	
562998	All Other Miscellaneous Waste Management Services	50	
Sector 61—Educational Services			
Subsector 611—Educational Services			

NAICS codes	NAICS U.S. industry title	Size standards in number of employees	Maximum average annual receipts ($ million)
611110	Elementary and Secondary Schools	50	
611210	Junior Colleges	50	
611310	Colleges, Universities and Professional Schools	50	
611410	Business and Secretarial Schools	50	
611420	Computer Training	50	
611430	Professional and Management Development Training	50	
611511	Cosmetology and Barber Schools	50	
611512	Flight Training	200	
611513	Apprenticeship Training	50	
611519	Other Technical and Trade Schools	50	
Except,	Job Corps Centers [13]	[13] 400	[13] $30.0
611610	Fine Arts Schools	50	
611620	Sports and Recreation Instruction	50	
611630	Language Schools	50	
611691	Exam Preparation and Tutoring	50	
611692	Automobile Driving Schools	50	
611699	All Other Miscellaneous Schools and Instruction	50	
611710	Educational Support Services	50	
	Sector 62—Health Care and Social Assistance		
	Subsector 621—Ambulatory Health Care Services		
621111	Offices of Physicians (except Mental Health Specialists)	100	
621112	Offices of Physicians, Mental Health Specialists	100	
621210	Offices of Dentists	50	
621310	Offices of Chiropractors	50	
621320	Offices of Optometrists	50	
621330	Offices of Mental Health Practitioners (except Physicians)	50	
621340	Offices of Physical, Occupational and Speech Therapists and Audiologists	50	
621391	Offices of Podiatrists	50	
621399	Offices of All Other Miscellaneous Health Practitioners	50	
621410	Family Planning Centers	100	
621420	Outpatient Mental Health and Substance Abuse Centers	100	
621491	HMO Medical Centers	100	
621492	Kidney Dialysis Centers	200	
621493	Freestanding Ambulatory Surgical and Emergency Centers	100	
621498	All Other Outpatient Care Centers	100	
621511	Medical Laboratories	100	
621512	Diagnostic Imaging Centers	100	
621610	Home Health Care Services	300	
621910	Ambulance Services	100	
621991	Blood and Organ Banks	100	
621999	All Other Miscellaneous Ambulatory Health Care Services	100	
	Subsector 622—Hospitals		
622110	General Medical and Surgical Hospitals	400	
622210	Psychiatric and Substance Abuse Hospitals	400	
622310	Specialty (except Psychiatric and Substance Abuse) Hospitals	400	
	Subsector 623—Nursing and Residential Care Facilities		
623110	Nursing Care Facilities	300	
623210	Residential Mental Retardation Facilities	300	
623220	Residential Mental Health and Substance Abuse Facilities	50	
623311	Continuing Care Retirement Communities	300	
623312	Homes for the Elderly	50	
623990	Other Residential Care Facilities	50	
	Subsector 624—Social Assistance		
624110	Child and Youth Services	50	
624120	Services for the Elderly and Persons with Disabilities	50	
624190	Other Individual and Family Services	50	
624210	Community Food Services	50	
624221	Temporary Shelters	50	
624229	Other Community Housing Services	50	
624230	Emergency and Other Relief Services	50	
624310	Vocational Rehabilitation Services	50	

NAICS codes	NAICS U.S. industry title	Size standards in number of employees	Maximum average annual receipts ($ million)
624410	Child Day Care Services	50	
	Sector 71—Arts, Entertainment and Recreation		
	Subsector 711—Performing Arts, Spectator Sports and Related Industries		
711110	Theater Companies and Dinner Theaters	50	
711120	Dance Companies	50	
711130	Musical Groups and Artists	50	
711190	Other Performing Arts Companies	50	
711211	Sports Teams and Clubs	50	
711212	Race Tracks	50	
711219	Other Spectator Sports	50	
711310	Promoters of Performing Arts, Sports and Similar Events with Facilities	100	
711320	Promoters of Performing Arts, Sports and Similar Events without Facilities	50	
711410	Agents and Managers for Artists, Athletes, Entertainers and Other Public Figures	50	
711510	Independent Artists, Writers, and Performers	50	
	Subsector 712—Museums, Historical Sites and Similar Institutions		
712110	Museums	50	
712120	Historical Sites	50	
712130	Zoos and Botanical Gardens	50	
712190	Nature Parks and Other Similar Institutions	50	
	Subsector 713—Amusement, Gambling and Recreation Industries		
713110	Amusement and Theme Parks	100	
713120	Amusement Arcades	50	
713210	Casinos (except Casino Hotels)	50	
713290	Other Gambling Industries	50	
713910	Golf Courses and Country Clubs	50	
713920	Skiing Facilities	200	
713930	Marinas	50	
713940	Fitness and Recreational Sports Centers	50	
713950	Bowling Centers	50	
713990	All Other Amusement and Recreation Industries	50	
	Sector 72—Accommodation and Food Services		
	Subsector 721—Accommodation		
721110	Hotels (except Casino Hotels) and Motels	100	
721120	Casino Hotels	100	
721191	Bed and Breakfast Inns	50	
721199	All Other Traveler Accommodation	50	
721211	RV (Recreational Vehicle) Parks and Campgrounds	50	
721214	Recreational and Vacation Camps (except Campgrounds)	50	
721310	Rooming and Boarding Houses	50	
	Subsector 722—Food Services and Drinking Places		
722110	Full-Service Restaurants	50	
722211	Limited-Service Restaurants	50	
722212	Cafeterias	50	
722213	Snack and Nonalcoholic Beverage Bars	50	
722310	Food Service Contractors	400	
722320	Caterers	50	
722330	Mobile Food Services	50	
722410	Drinking Places (Alcoholic Beverages)	50	
	Sector 81—Other Services		
	Subsector 811—Repair and Maintenance		
811111	General Automotive Repair	50	
811112	Automotive Exhaust System Repair	50	
811113	Automotive Transmission Repair	50	
811118	Other Automotive Mechanical and Electrical Repair and Maintenance	50	
811121	Automotive Body, Paint and Interior Repair and Maintenance	50	
811122	Automotive Glass Replacement Shops	50	

NAICS codes	NAICS U.S. industry title	Size standards in number of employees	Maximum average annual receipts ($ million)
811191	Automotive Oil Change and Lubrication Shops	50	
811192	Car Washes	50	
811198	All Other Automotive Repair and Maintenance	50	
811211	Consumer Electronics Repair and Maintenance	50	
811212	Computer and Office Machine Repair and Maintenance	150	
811213	Communication Equipment Repair and Maintenance	50	
811219	Other Electronic and Precision Equipment Repair and Maintenance	50	
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	50	
811411	Home and Garden Equipment Repair and Maintenance	50	
811412	Appliance Repair and Maintenance	50	
811420	Reupholstery and Furniture Repair	50	
811430	Footwear and Leather Goods Repair	50	
811490	Other Personal and Household Goods Repair and Maintenance	50	
Subsector 812—Personal and Laundry Services			
812111	Barber Shops	50	
812112	Beauty Salons	50	
812113	Nail Salons	50	
812191	Diet and Weight Reducing Centers	50	
812199	Other Personal Care Services	50	
812210	Funeral Homes and Funeral Services	50	
812220	Cemeteries and Crematories	50	
812310	Coin-Operated Laundries and Drycleaners	50	
812320	Drycleaning and Laundry Services (except Coin-Operated)	50	
812331	Linen Supply	200	
812332	Industrial Launderers	200	
812910	Pet Care (except Veterinary) Services	50	
812921	Photo Finishing Laboratories (except One-Hour)	50	
812922	One-Hour Photo Finishing	50	
812930	Parking Lots and Garages	100	
812990	All Other Personal Services	50	
Subsector 813—Religious, Grantmaking, Civic, Professional and Similar Organizations			
813110	Religious Organizations	50	
813211	Grantmaking Foundations	50	
813212	Voluntary Health Organizations	50	
813219	Other Grantmaking and Giving Services	50	
813311	Human Rights Organizations	50	
813312	Environment, Conservation and Wildlife Organizations	50	
813319	Other Social Advocacy Organizations	50	
813410	Civic and Social Organizations	50	
813910	Business Associations	50	
813920	Professional Organizations	50	
813930	Labor Unions and Similar Labor Organizations	50	
813940	Political Organizations	50	
813990	Other Similar Organizations (except Business, Professional, Labor, and Political Organizations)	50	

Sector 92—Public Administration [14]

(Small business size standards are not established for this sector. Establishments in the Public Administration sector are Federal, state, and local government agencies which administer and oversee government programs and activities that are not performed by private establishments.)

[1] *NAICS code 115310—Support Activities for Forestry:* Forest Fire Suppression and Fuels Management Services are two components of Support Activities for Forestry. Forest Fire Suppression includes establishments which provide services to fight forest fires. These firms usually have fire-fighting crews and equipment. Fuels Management Services firms provide services to clear land of hazardous materials that would fuel forest fires. The treatments used by these firms may include prescribed fire, mechanical removal, establishing fuel breaks, thinning, pruning, and piling.

[2] *NAICS code 237990—Dredging:* To be considered small for purposes of Government procurement, a firm must perform at least 40% of the volume dredged with its own equipment or equipment owned by another small dredging concern.

[3] *NAICS code 238990—Building and Property Specialty Trade Services:* If a procurement requires the use of multiple specialty trade contractors (*i.e.,* plumbing, painting, plastering, carpentry, *etc.*), and no specialty trade accounts for 50% or more of the value of the procurement, all such specialty trade contractors activities are considered a single activity and classified as Building and Property Specialty Trade Services.

[4] *NAICS code 311421—Fruit and Vegetable Canning:* For purposes of Government procurement for food canning and preserving, the standard of 500 employees excludes agricultural labor as defined in section 3306(k) of the Internal Revenue Code, 26 U.S.C. 3306(k).

[5] *NAICS code 324110—Petroleum Refineries:* To be an eligible small business, a firm may not have more than 1,500 employees or more than 125,000 barrels per day capacity of petroleum-based inputs, including crude oil or bona fide feedstocks. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. In addition, for the Federal Government's procurement of refined petroleum products, the total product to be delivered under the contract must be at least 90% refined by the successful bidder from either crude oil or bona fide feedstocks.

[6] *NAICS Subsectors 333—Machinery Manufacturing; 334—Computer and Electronic Product Manufacturing; 335—Electrical Equipment, Appliance and Component Manufacturing; and 336—Transportation Equipment Manufacturing:* For rebuilding machinery or equipment on a factory basis, or equivalent, use the NAICS code for a newly manufactured product. Concerns performing major rebuilding or overhaul activities do not necessarily have to meet the criteria for being a ''manufacturer'' although the activities may be classified under a manufacturing NAICS code. Ordinary repair services or preservation are not considered rebuilding.

[7] *NAICS code 336413—Other Aircraft Parts and Auxiliary Equipment Manufacturing:* Contracts for the rebuilding or overhaul of aircraft ground support equipment on a contract basis are classified under NAICS code 336413.

[8] *Subsector 483—Water Transportation—Offshore Marine Services:* The applicable size standard shall be 150 employees for firms furnishing specific transportation services to concerns engaged in offshore oil and/or natural gas exploration, drilling production, or marine research; such services encompass passenger and freight transportation, anchor handling, and related logistical services to and from the work site.

[9] *NAICS code 531190—Lessors of Other Real Property, Leasing of Building Space to the Federal Government by Owners:* For Government procurement, a size standard of 150 employees applies to the owners of building space leased to the Federal Government. The standard does not apply to an agent.

[10] *NAICS code 541710—Research and Development in the Physical, Engineering, and Life Sciences:* For research and development contracts requiring the delivery of a manufactured product, the appropriate size standard is that of the manufacturing industry.

(a) ''Research and Development'' means laboratory or other physical research and development. It does not include economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

(b) For purposes of the Small Business Innovation Research (SBIR) program only, a different definition has been established. *See* § 121.701 of these regulations.

(c) ''Research and Development'' for guided missiles and space vehicles includes evaluations and simulation, and other services requiring thorough knowledge of complete missiles and spacecraft.

[11] *NAICS 561210—Facilities Support Services:*

(a) If one or more activities of Facilities Support Services as defined in paragraph (b) (below in this footnote) can be identified with a specific industry and that industry accounts for 50% or more of the value of an entire procurement, then the proper classification of the procurement is that of the specific industry, not Facilities Support Services.

(b) ''Facilities Support Services'' requires the performance of three or more separate activities in the areas of services or specialty trade construction industries. If services are performed, these service activities must each be in a separate NAICS industry. If the procurement requires the use of specialty trade contractors (plumbing, painting, plastering, carpentry, *etc.*), all such specialty trade construction activities are considered a single activity and classified as Base Housing Maintenance. Since Base Housing Maintenance is only one activity, two additional activities of separate NAICS industries are required for a procurement to be classified as ''Facilities Support Services.''

[12] *NAICS 562910—Environmental Remediation Services:*

(a) For SBA assistance as a small business concern in the industry of Environmental Remediation Services, other than for Government procurement, a concern must be engaged primarily in furnishing a range of services for the remediation of a contaminated environment to an acceptable condition including, but not limited to, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, containment, remedial action, removal of contaminated materials, storage of contaminated materials and security and site closeouts. If one of such activities accounts for 50% or more of a concern's total revenues, employees, or other related factors, the concern's primary industry is that of the particular industry and not the Environmental Remediation Services Industry.

(b) For purposes of classifying a Government procurement as Environmental Remediation Services, the general purpose of the procurement must be to restore or directly support the restoration of a contaminated environment (such as, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, remediation services, containment, removal of contaminated materials, storage of contaminated materials or security and site closeouts) and also the procurement must be composed of activities in three or more separate industries with separate NAICS codes or, in some instances (*e.g.,* engineering), smaller sub-components of NAICS codes with separate, distinct size standards. These activities may include, but are not limited to, separate activities in industries such as: Heavy Construction; Special Trade Construction; Engineering Services; Architectural Services; Management Consulting Services; Hazardous and Other Waste Collection; Remediation Services; Testing Laboratories; and Research and Development in the Physical, Engineering and Life Sciences. If any activity in the procurement can be identified with a separate NAICS code, or component of a code with a separate distinct size standard, and that industry accounts for 50 percent or more of the value of the entire procurement, then the proper size standard is the one for that particular industry, and not the Environmental Remediation Service size standard.

[13] *NAICS code 611519—Job Corps Centers:* For classifying a Federal procurement, the purpose of the solicitation must be for the management and operation of a U.S. Department of Labor Job Corps Center. The activities involved include admissions activities, life skills training, educational activities, comprehensive career preparation activities, career development activities, career transition activities, as well as the management and support functions and services needed to operate and maintain the facility. For SBA assistance as a small business concern, other than for Federal Government procurements, a concern must be primarily engaged in providing the services to operate and maintain Federal Job Corps Centers.

[14] *NAICS Sector 92—Public Administration:* Small Business Size Standards are not established for this sector. Establishments in the Public Administration sector are Federal, state, and local government agencies which administer and oversee government programs and activities that are not performed by private establishments. Concerns performing operational services for the administration of a government program are classified under the NAICS private sector industry based on the activities performed. Similarly, procurements for these types of services are classified under the NAICS private sector industry that best describes the activities to be performed. For example, if a government agency issues a procurement for law enforcement services, the requirement would be classified using one of the NAICS industry codes under 56161, Investigation, Guard, and Armored Car Services.

[15] *NAICS code 541519:* An Information Technology Value Added Reseller provides a total solution to information technology acquisitions by providing multi-vendor hardware and software along with significant services. Significant value added services consist of, but are not limited to, configuration consulting and design, systems integration, installation of multi-vendor computer equipment, customization of hardware or software, training, product technical support, maintenance, and end user support. For purposes of Government procurement, an information technology procurement classified under this industry category must consist of at least 15% and not more than 50% of value added services as measured by the total price less the cost of information technology hardware, computer software, and profit. If the contract consists of less than 15% of value added services, then it must be classified under a NAICS manufacturing industry. If the contract consists of more than 50% of value added services, then it must be classified under the NAICS industry that best describes the predominate service of the procurement. To qualify as an Information Technology Value Added Reseller for purposes of SBA assistance, other than for Government procurement, a concern must be primarily engaged in providing information technology equipment and computer software and provide value added services which account for at least 15% of its receipts but not more than 50% of its receipts.

* * * * *

3. Revise § 121.301(d) to read as follows:

§ 121.301 What size standards are applicable to financial assistance programs?

* * * * *

(d) For Surety Bond Guarantee assistance an applicant, including its affiliates, must not exceed the size standard for the industry in which the applicant is primarily engaged.

* * * * *

4. Revise § 121.406(b)(1)(i) to read as follows:

§ 121.406 How does a small business concern qualify to provide manufactured products under small business set-aside or MED procurements?

* * * * *

(b) *Nonmanufacturers.* (1) * * *

(i) Does not exceed 100 employees;

* * * * *

5. Revise § 121.502(a)(2) to read as follows:

§ 121.502 What size standards are applicable to programs for sales or leases of Government property?

(a) * * *

(2) A concern not primarily engaged in manufacturing is small for sales or leases of Government property if it does not exceed 50 employees.

* * * * *

6. Revise § 121.508(a)(2) to read as follows:

§ 121.508 What are the size standards and other requirements for the purchase of Government owned Special Salvage Timber?

(a) * * *

(2) Have, together with its affiliates, no more than 50 employees during any pay period for the last 12 months; and,

* * * * *

7. Revise § 121.509(a) to read as follows:

§ 121.509 What is the size standard for leasing of Government land for coal mining?

* * * * *

(a) Together with its affiliates, does not have more than 300 employees;

* * * * *

9. Revise § 121.512(b) to read as follows:

§ 121.512 What is the size standard for stockpile purchases?

* * * * *

(b) Together with its affiliates, it does not have more than 400 employees.

Dated: February 3, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. 04–5049 Filed 3–18–04; 8:45 am]

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Part III

Securities and Exchange Commission

17 CFR Parts 200, 201, and 240

Adoption of Amendments to the Rules of Practice and Delegations of Authority of the Commission; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 201, and 240

[Release No. 34–49412; File No. S7–25–03]

RIN 3235–AI98

Adoption of Amendments to the Rules of Practice and Delegations of Authority of the Commission

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission (''Commission'') is amending its Rules of Practice and certain of its delegations of authority to the staff in light of the Sarbanes-Oxley Act of 2002. The Sarbanes-Oxley Act, among other things, authorizes the Commission to review disciplinary actions of the Public Company Accounting Oversight Board and to create ''Fair Funds'' in Commission administrative proceedings. The Commission also is amending other provisions of the Rules of Practice and its delegations as a result of its experience with those rules and to correct certain citations. The amendments will enhance the transparency and facilitate parties' understanding of the applicability of the review process to Board proceedings. The amendments also will make practice under the rules easier and more efficient.

EFFECTIVE DATE: April 19, 2004.

FOR FURTHER INFORMATION CONTACT: Bari S. Podell, Office of the General Counsel, (202) 942–0950, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0208.

SUPPLEMENTARY INFORMATION: On November 25, 2003, the Commission proposed amendments to the Rules of Practice (''Rules'').[1] The Commission proposed new rules to effectuate the provisions of the Sarbanes-Oxley Act of 2002.[2] The Commission also proposed additional amendments to its existing Rules as a result of experience with those rules. Additional amendments were proposed to correct typographical errors and change certain citations to conform to the amended rules.

I. Discussion

The Commission requested comment from interested persons. The Commission received two comment letters in response to the Proposing Release.[3] One comment letter expressed concern that the Commission preserve funds for future disgorgement funds. The other comment letter recommended certain bookkeeping measures. The Commission will consider the two commenters' observations and suggestions in connection with these issues. There were no comment letters addressing the text or operation of the proposed Rules. After careful consideration, the Commission is adopting the amendments to the Rules of Practice and related provisions, as well as certain delegations of authority to the staff, essentially as proposed.

A. Amendments as a Result of the Sarbanes-Oxley Act

Section 107(c) of the Sarbanes-Oxley Act[4] provides for Commission review of disciplinary actions imposed by the Public Company Accounting Oversight Board (''Board'') and actions that result in the disapproval of registration of a public accounting firm.[5] Sections 105(d) and 107(c) of the Sarbanes-Oxley Act require the Board to give the Commission notice if the Board disapproves the registration of a public accounting firm or if the Board disciplines a registered public accounting firm or a person associated with a registered public accounting firm.

In creating its framework for Commission review of Board actions, section 107(c) of the Sarbanes-Oxley Act specifies that sections 19(d)(2) and 19(e)(1) of the Securities Exchange Act of 1934,[6] which govern Commission review of self-regulatory organization disciplinary proceedings, shall govern Commission review of final disciplinary sanctions imposed by the Board ''as fully as if the Board were a self-regulatory organization and the Commission were the appropriate regulatory agency for such organization for purposes of those sections 19(d)(2) and 19(e)(1). * * *'' As described in the proposing release, the effect of section 107(c) of the Sarbanes-Oxley Act is to make Board actions subject to Commission review under those Exchange Act provisions on the same basis as actions by existing self-regulatory organizations, and to make relevant rules under those provisions applicable to that review.

The Commission nonetheless proposed to enact new rules and to amend others for purposes of clarity. The Commission has now determined to adopt the new proposed rules and those changes as proposed. The changes include specific references to Commission review of Board actions and, for example, identify the process by which the Board will provide notice to the Commission of its actions.

1. Disapproval of Registration

Rule 19d–4(a) adds definitions. As proposed and adopted, rule 19d–4(b) will require the Board to file with the Commission and to serve on the public accounting firm a notice of disapproval of registration within 30 days of the Board's action.[7] The notice must include the firm's name and last known address (as reflected in the Board's records), the basis for the Board's disapproval, a copy of the Board's written notice of disapproval, and such other information as the Board deems relevant.

2. Review of Disciplinary Sanctions

The Commission has determined to adopt proposed Rule 19d–4(c). That rule requires the Board to file and serve a notice of any disciplinary sanction, other than a disapproval of registration, within 30 days of the Board's action. The notice must provide the name and last address (as reflected in the Board's records) of the associated person or registered public accounting firm disciplined and a description of the acts or omissions on which the sanction is based. The notice must also specify the sanction imposed, give the effective date of the sanction, and include a statement of the reasons for the sanction or a copy of the Board's statement justifying the sanction, as well as such other information as the Board deems relevant.

The Commission is also adopting proposed Rule 440(a) with respect to applications for review from actions of the Board. Rule 440(a) permits any person aggrieved by a final disciplinary sanction (including disapproval of a completed application for registration of a public accounting firm) imposed by the Board to file an application for review with the Commission. Rule

[1] Proposed Amendments to the Rules of Practice and Related Provisions, Exchange Act Release No. 48832, 68 FR 68185 (Dec. 5, 2003). It is noted that the release incorrectly was dated November 23, 2003. The correct date of the release is November 25, 2003.

[2] 15 U.S.C. 7201 *et seq.*

[3] Letters from Donna L. Greer, Vice-President of Business Development, Greer Information Services, Ltd. (December 31, 2003), and from Joseph E. Dryer, Houston, Texas (December 4, 2003).

[4] 15 U.S.C. 7217(c).

[5] Under section 102(c) of the Sarbanes-Oxley Act, 15 U.S.C. 7212(c), the Board's written notice of disapproval of a complete application for registration as a registered public accounting firm is treated as a ''disciplinary sanction'' for purposes of sections 105(d) and 107(c) of that Act, 15 U.S.C. 7215(d), 7217(c).

[6] 15 U.S.C. 78s(d)(2) and 78s(e)(1).

[7] The 30-day period for filing is consistent with the thirty days provided in section 19(d)(2) of the Exchange Act for the filing of an application for review by a person aggrieved by certain actions taken by a self-regulatory organization.

440(b) requires any application to be filed within 30 days after the Board's notice under Rule 19d–4 is received by the aggrieved person. The application must identify the determination complained of and contain a brief statement of the alleged errors in the determination. If the applicant is represented by counsel, the application must be accompanied by a notice of counsel's appearance, filed in accordance with new Rule 102(d). Under Rule 440(d), the Board has fourteen days after receipt of the application to certify the record to the Commission and serve one copy of the record index on each party.

3. Stay of Board Action

In accordance with section 105(e)(1) of the Sarbanes-Oxley Act,[8] proposed Rule 440(c) provided that filing an application for review would act as a stay of the Board's action unless the Commission otherwise orders. Proposed Rule 401(e)(1) would permit any person aggrieved by the automatic stay to ask the Commission to lift the stay. The Commission may, in any event, lift the stay on its own motion.

As permitted under section 105(e)(1) of the Sarbanes-Oxley Act, proposed Rule 401(e)(2) provided that the Commission may act to lift a stay of Board action summarily, without notice and opportunity for a hearing. The Commission could also expedite consideration of a motion to lift a stay of Board action to the extent expedition is consistent with the Commission's other responsibilities. If the consideration of a motion to lift is expedited, proposed Rule 401(e)(3) permitted persons opposing the lifting of the stay to file an opposition within two days of service of the motion to lift unless the Commission orders a different period.[9] The Commission is adopting all these provisions.

4. Review on Motion of the Commission

The Commission is also adopting proposed Rule 441(a), which permits the Commission to review a Board disciplinary sanction on its own motion. The Commission must determine whether to take review of a Board disciplinary sanction within 40 days after the Board files its notice of the action.[10] Rule 441(b) permits the Commission to raise any material matter, whether or not the parties previously raised that matter. The Commission can raise material matters in cases it takes up on its own motion and in cases that are appealed to it. The Commission may provide notice and an opportunity for supplemental briefing if the Commission believes that such briefing would significantly aid its decisional process.

5. Amendments to Existing Rules

The Commission also adopts as proposed certain amendments to the following Rules with respect to the review proceedings created by the Sarbanes-Oxley Act:

- The definition of ''proceeding'' in Rule 101(a)(9) (Definitions) is amended to include review of Board disciplinary sanctions under Rule 440.[11]
- Rule 202(a) (Specification of procedures by parties in certain proceedings) and Rule 210 (Parties, limited participants and amici curiae), which permit intervention and leave to participate on a limited basis, are amended to exclude review of Board disciplinary sanctions under Rule 440. These Rules currently do not apply to Commission enforcement or disciplinary proceedings or to review of determinations by self-regulatory organizations.
- Rule 450(a)(2) (Briefs filed with the Commission) is amended to include a provision for briefs to be filed in the Commission's review of final disciplinary sanctions imposed by the Board. Under the Rule, the Commission would issue a briefing schedule order within 21 days (or such longer time as provided by the Commission) following its receipt of the Board's index of the record of the Board's determination.
- Rule 460(a)(3) (Record before the Commission) defines the contents of the record before the Commission to include the record certified to the Commission by the Board, any application for review, and any submissions made to the Commission.

The Commission is revising its *ex parte* rule, 17 CFR 200.111 (Prohibitions; application, definitions), to provide that, in proceedings to review Board action, the prohibitions against *ex parte* communications commence when a copy of the application for review of the Board's action has been filed with the Commission and served on the Board.[12]

6. Delegations of Authority

To implement these rule amendments, the Commission adds certain delegations to the staff. Title 17 CFR 200.30–7 (Delegation of authority to the Secretary of the Commission) currently delegates to the Commission's Secretary the authority, among other things, to postpone or adjourn hearings, set and reallocate time for oral argument, extend the time to make filings, issue orders pursuant to offers of settlement, and certify records to the appropriate United States Court of Appeals. The Commission is amending this delegation to make clear that the delegations extend, where appropriate, to proceedings under the Sarbanes-Oxley Act.

The Commission also is amending 17 CFR 200.30–7(a)(5) and 200.30–10(a)(5), which currently permit the Secretary or the Chief Administrative Law Judge, respectively, to authorize a party to file briefs exceeding 60 pages ''in accordance with Rule 450(c).'' However, existing Rule 450(c) provides that briefs cannot exceed 50 pages, absent leave of the Commission.[13] The Commission therefore is correcting these delegations to provide that the Secretary or the Chief Administrative Law Judge may authorize a party to file briefs exceeding 50 pages. The Commission also is making clear that its delegation of authority to the Secretary and its delegation of authority to the Chief Administrative Law Judge include proceedings under the Securities Investor Protection Act of 1970 and under Rule 102(e).

The Commission further amends 17 CFR 200.30–14(g)(1) to delegate to the General Counsel the authority, among other things, to grant requests for the submission of late briefs, issue an order dismissing a proceeding as to a party if the party requests to withdraw its appeal, permit a party to supplement the record, and issue briefing schedule orders in proceedings under the Sarbanes-Oxley Act. The General Counsel also is delegated the authority, in proceedings under the Sarbanes-Oxley Act, to determine that an application for review has been abandoned, to determine whether to stay a Commission order or vacate a

[8] 15 U.S.C. 7215(e)(1).

[9] The two-day period is modeled after Rule 401(d)(3), which permits persons opposing a motion to the Commission for a stay to file a statement in opposition within two days of service of the motion.

[10] Rule 421(a) permits the Commission to order review of certain determinations by a self-regulatory organization within 40 days after notice thereof is filed with the Commission.

[11] Rule 101(a)(12) defines the term ''Board'' to mean the Public Company Accounting Oversight Board.

[12] At the same time, the Commission is correcting 17 CFR 200.111(c)(1)(ii) to provide that, in proceedings under section 19(d) of the Securities Exchange Act of 1934, the prohibitions against *ex parte* communications commence when a copy of the application for review of the self-regulatory organization's action is filed with the Commission. The rule currently provides that the prohibition commences when the Secretary serves the application on the self-regulatory organization. This no longer is the Commission's practice. The change conforms the language of the provision to reflect current practice.

[13] 17 CFR 201.450(c).

preexisting stay pending appeal of the order to the Federal courts, to grant or deny requests for oral argument, and to determine whether to lift the automatic stay of a disciplinary sanction. The General Counsel is further delegated the authority to request additional briefs from the parties. *See* 17 CFR 200.30–14(g)(1)(vii), (g)(4), (g)(5), (g)(7), and (g)(8).

B. Fair Funds and Disgorgement

Section 308(a) of the Sarbanes-Oxley Act [14] provides that, in a Commission administrative proceeding where the Commission or a hearing officer enters an order requiring disgorgement from a respondent for a violation of the securities laws, or where the respondent agrees in settlement to payment of such disgorgement, any civil penalty also ordered against that respondent may be added to the disgorgement funds to create a ''Fair Fund'' to be disbursed by the Commission for the benefit of the victims of such violation. Section 308(b) of the Sarbanes-Oxley Act [15] authorizes the Commission to accept gifts or bequests to the United States of real and personal property for deposit in a Fair Fund.

Administration of, and distribution to investors under, Fair Funds and disgorgement plans occur after the conclusion of the principal action against a respondent. The functions involved are administrative in nature and not subject to provisions such as Rule 120 of the Rules of Practice and the *ex parte* communication rule. Recognizing this, the Commission has determined to adopt its proposal to remove, from subpart D of the Rules of Practice, Rules 610 through 620, which relate to the development, submission, approval, and administration of orders of disgorgement, and to the right to challenge orders of disgorgement, and to include them in a new subpart F.

The Commission is adopting Rules 1100, 1101, and 1102 as proposed. New Rule 1100 authorizes the Commission to create a Fair Fund in any administrative proceeding in which a final order is entered against a respondent requiring disgorgement and payment of a civil money penalty. The Commission may also create a Fair Fund if it approves a settlement of an administrative proceeding that provides for a respondent's payment of disgorgement and a civil money penalty. The Commission may add to the Fair Fund any property received in accordance with section 308(b) of the Sarbanes-Oxley Act.[16]

The Commission has the power to require disgorgement of a wrong-doer's ill-gotten gains obtained by virtue of his or her securities law violation, regardless of whether particular investors suffered any damages.[17] The Commission notes that Fair Funds must be disbursed to the investors harmed by the securities law violation at issue. Where there are no identifiable victims of a violation, the Commission will continue to require that any disgorgement and civil money penalty amounts be paid to the United States Treasury.

In some cases, the Commission may conclude that it is in the public interest to impose a civil money penalty and order disgorgement even though the relative value of the ill-gotten gains and the number of potential claimants would result in high administrative costs and *de minimis* distributions to individual investors. Under such circumstances, the Commission will not create a Fair Fund and will continue its practice of ordering that the disgorgement and civil penalty amount be paid directly to the United States Treasury.

The Rules permit the Commission or the hearing officer, as appropriate, to oversee the administration of both disgorgement funds and Fair Funds. As adopted, Rule 1101(a) allows the Commission or the hearing officer at any time to order any party to submit a plan for the administration of either a Fair Fund or a disgorgement fund. Unless ordered otherwise, the Division of Enforcement must submit such a plan within 60 days after the respondent has tendered the funds or other assets pursuant to the Commission's order to pay disgorgement and, if applicable, a civil money penalty.

Rule 1101(b) requires that a Fair Fund plan or disgorgement fund plan shall provide for: Receiving and holding additional funds, including any funds received under section 308(b) of the Sarbanes-Oxley Act; identifying categories of persons potentially eligible to receive funds; providing notice to those persons of the fund's existence and their potential eligibility; processing claims; termination of the fund and disposition of any remaining assets not otherwise distributed; administration of the fund; and such other provisions as the Commission or the hearing officer deems appropriate.

Rule 1102(a) provides that the Commission may authorize payment of disgorgement funds into any court registry or to a court-appointed receiver in any case that alleges the same or similar facts against the respondent.

Rule 1102(b) permits the Commission or the hearing officer to order that funds be paid directly to the United States Treasury if the cost of administering the fund relative to the value of the disgorgement fund, together with any civil money penalty, and the number of potential claimants do not justify distribution of the funds.

As adopted, Rule 1103 requires that notice of a proposed disgorgement plan or a proposed Fair Fund plan be published in the *SEC Docket* or such other publications as the Commission or the hearing officer directs. The notice must specify how to obtain copies of the proposed plan and inform those desiring to comment to submit their written views to the Commission. The Commission also would post notice of a proposed plan on its Web site. The reference in the proposed rule to publication in the *SEC News Digest* has been deleted since the *News Digest* now is available through the Commission's Web site.

The Commission is also adopting Rules 1104, 1105, and 1106 as proposed. Rule 1104 provides that, at any time after 30 days following publication of the notice of a proposed disgorgement plan or a proposed Fair Fund plan, the Commission or the hearing officer may approve, modify, or disapprove the proposed plan. If a plan is substantially modified, the Commission or the hearing officer may order publication of the modified plan before its adoption.

Rule 1105 provides for the administration of Fair Funds and disgorgement funds. It permits the Commission or the hearing officer to appoint any person, including a Commission employee, as a fund administrator. Either the Commission or the hearing officer would be able to remove an administrator.

An administrator who is not a Commission employee must post a bond in an amount designated by the Commission, unless the bond is waived by the Commission. An administrator who is not a Commission employee may receive a fee for reasonable services, subject to approval by the Commission or the hearing officer. Commission employees may not receive such fees. Fees and expenses from fund administration would be paid first from interest and then, if the interest were

[14] 15 U.S.C. 7246(a).

[15] 15 U.S.C. 7246(b).

[16] Section 308(b) of the Sarbanes-Oxley Act provides that the Commission may accept, hold, and utilize gifts of property for a Fair Fund.

[17] *See, e.g., SEC* v. *First City Financial Corp.,* 890 F.2d 1215, 1230 (D.C. Cir. 1989) (defendant who violated Exchange Act section 13 required to disgorge although harm was to the market as a whole, not to particular persons).

insufficient, from corpus. The administrator must give periodic accountings, as ordered, and submit a final accounting prior to his or her discharge and cancellation of any bond. On motion of a party or the administrator or upon notice of the hearing officer or the Commission, the plan may be amended.

Rule 1105(b) provides that a respondent may be required or permitted to administer a plan of disgorgement, subject to terms the Commission or the hearing officer deems appropriate. At this time, the Commission does not propose to extend this provision to Fair Funds. A Fair Fund would include a civil penalty and might include funds conveyed to the United States pursuant to section 308(b) of the Sarbanes-Oxley Act.

Rule 1106 states that no person will be granted the right to intervene or appear in a proceeding to challenge an order of disgorgement, an order creating a Fair Fund, an order approving, modifying, or disapproving a disgorgement plan or a Fair Fund plan, or any determination relating to a plan based solely on the person's eligibility or potential eligibility to participate in a fund or based on a private right of action. As was the case under the Commission's disgorgement rules before these amendments, such person's participation is limited to submitting comments in accordance with Rule 1103.

C. Other Proposed Amendments

In 1995, the Commission substantially amended its Rules of Practice. After several years of experience with these Rules, the Commission has determined to make certain changes to the Rules to make practice under them easier and more efficient.

1. The existing Rules do not make explicit the Commission's authority to order a variation from the rules governing proceedings before it. The Commission is adopting proposed Rule 100(c), which specifies that the Commission may, by order, direct in a particular proceeding that an alternative procedure shall apply or that compliance with an otherwise applicable rule is unnecessary. Such an order would be based on the Commission's determination that to do so would serve the interests of justice and not result in prejudice to any party to the proceeding.

2. Section 11A of the Exchange Act and the rules thereunder authorize the Commission to adjudicate certain disputes involving registered securities information processors, national market system plans, or transaction reporting plans.[18] In addition to the inclusion of review of Board disciplinary sanctions discussed above, as proposed, Rule 101(a)(9) is amended to expand the definition of ''proceeding'' to make clear that the Rules of Practice are applicable to such adjudications.[19]

3. The Commission previously required counsel to file a motion to withdraw as counsel. The Commission is adopting proposed Rule 102(d)(4), which will now require only that a person who seeks to withdraw his or her appearance in a representative capacity file a notice of withdrawal with the Commission or the hearing officer. The notice should state the withdrawing representative's name, address, and telephone number; the name, address, and telephone number of the person for whom the appearance was made; and the withdrawal's effective date. If the person who seeks to withdraw knows the new representative's name, address, and telephone number, or knows that the person for whom the appearance was made intends to represent him- or herself, that information would also be required to be included in the notice. The notice must be served on the parties in accordance with Rule 150. In addition, the notice must be filed at least five days before the proposed effective date of the withdrawal.

4. The Commission has found that some appeals could be streamlined if certain issues were addressed first to the hearing officer. The Commission is therefore adopting the proposed amendment to Rule 111. The amendment authorizes hearing officers to consider and rule on a motion to correct a manifest error of fact, provided that the motion is filed within ten days of the initial decision.

5. Former Rule 141(a)(3) required the Secretary to ''maintain a record of service on parties.'' The rule is amended to authorize the Secretary to maintain records of service in computerized records, rather than hard copy records.

6. Former Rule 141(a)(3) required the Secretary to place in the record of the proceeding confirmations of delivery of service. The Commission has concluded that it is easier to maintain confirmations of service by certified mail in a single file. The Commission believes this form of recordkeeping will permit easier retrieval of these documents. The Commission amends Rule 141(a)(3) accordingly.

7. Former Rule 141(b) provided that service of written orders or decisions by the Commission or by a hearing officer, other than an order instituting proceedings, must be made by any method of service authorized under Rule 141(a) or Rule 150(c)(1)–(3). As discussed below, the Commission now is amending Rule 150 to abolish the requirement that the parties agree in writing to accept service by facsimile transmission.

However, the Commission has determined that it is important to be able to demonstrate that a party has agreed to accept service of an order or decision by facsimile transmission. Therefore, as amended, Rule 141(b) provides that orders and decisions may be served by facsimile only if the party to be served has agreed to accept such service in a writing, signed by the party, and has provided the Commission with facsimile machine telephone number and hours of facsimile machine operation. Rule 141(b) replaces the reference to Rule 150(c) with a reference to Rules 150(c)(1)–(3).

8. As noted above, the Commission is adopting its proposed amendment to Rule 150(c)(4), governing parties' service of documents by facsimile transmission, to eliminate the requirement that parties who seek to serve each other by facsimile agree to do so in writing. As proposed, the Commission also is amending Rule 150(c)(4) to eliminate the requirement that receipt of each document served by facsimile be confirmed by a manually signed receipt. The Commission's experience has shown that, in many instances, parties were serving each other by facsimile but were not entering into the agreements or confirming by manually signed receipt. Under Rule 150(c)(4), persons who choose service by facsimile must provide the Commission and the parties with notice of the facsimile machine telephone number to be used and the hours of facsimile machine operation. As amended, Rule 150(c)(4)(ii) requires that facsimile transmissions be made at a time that results in their receipt during

[18] *See* Exchange Act section 11A(b)(5) (requiring Commission to review prohibitions or limitations of access to services offered by registered securities information processors); Exchange Act Rule 11Aa3–2(e) (giving Commission discretion to entertain appeals from actions under national market system plans); Exchange Act Rule 11Aa3–1(f) (giving Commission discretion to entertain appeals in connection with implementation or operation of transaction reporting plans).

[19] Because the current Rules of Practice do not specify a particular procedure for proceedings under Exchange Act section 11A, the Commission has been required to specify by order the procedural rules that are to be employed in section 11A review proceedings. *See, e.g., The Cincinnati Stock Exchange*, Exchange Act Release No. 43316 (Sept. 21, 2000), 73 SEC Docket 1006 (Order Accepting Jurisdiction, Establishing Procedures, and Ordering Briefs).

the Commission's business hours as defined in Rule 104.[20]

The Commission is also adopting proposed Rule 150(c)(4)(iii). That rule permits a party to decline to receive service by facsimile. Such a declination must be made in writing and served in accordance with Rule 150.

The Commission has determined to retain Rule 150(d)'s requirement that service by facsimile is complete upon confirmation of transmission by delivery of a manually signed receipt. The Commission asked for comment as to whether parties making service by facsimile should continue to provide a non-facsimile original contemporaneously with service by facsimile unless the parties agreed otherwise. The Commission received no comment, and has determined to eliminate this requirement.

9. Former Rule 151 provided that all papers required to be served by a party should be filed with the Commission ''at the time of service or promptly thereafter.'' Some parties have delayed making filings with the Commission. The rule is amended to make clear that filings with the Commission must be done ''contemporaneously'' with service on the parties. The Commission is also adopting its proposal to permit filings with the Commission to be made by facsimile transmission if the party also contemporaneously transmits to the Commission a non-facsimile original with a manual signature. Any person filing with the Commission by facsimile transmission assumes the risk that the transmission will not be completed in a timely or legible fashion.

10. The Commission is adopting its proposed amendment to Rule 152(a)(2) to require the use of 12-point or larger type (and eliminate the use of 10-point type) in order to enhance the legibility of filings.

11. Rule 154 previously limited a brief in support of or in opposition to a motion to 10 pages, exclusive of pages containing any table of contents, table of authorities, and/or addendum. As a result, the Commission received filings by parties who attempted to circumvent this page limitation by filing 10-page briefs and extremely lengthy motions. The Commission is adopting the proposed amendment to Rule 154 to establish a combined page limit of 15 pages for the motion and brief. This limitation is exclusive of any table of contents, table of authorities, or any addendum that consists solely of applicable cases, pertinent legislative provisions, or relevant exhibits. The proposal has been clarified to provide that the excluded addendum may include pertinent rule provisions.

12. Current Rule 151 provides that persons must file papers with the Commission within any time specified for filing.[21] Rule 160 provided generally that a prescribed period for response may be extended three days for service by mail. The Commission is adopting its proposed amendment to Rule 160 to make clear that a person does not receive additional time for service by mail if the order of the Commission or the hearing officer specifies a date certain for filing. If a party requires a short extension, the Commission believes that the party could request that extension under Rule 161.

13. Current Rule 201 provides for the consolidation of proceedings.[22] In accordance with the proposal, new Rule 201(b) permits the Commission to order any proceeding severed with respect to some or all of the parties. Motions to sever must be addressed to the Commission and represent that a settlement offer has been submitted to the Secretary for Commission consideration or otherwise show good cause.

14. Former Rule 230(a)(1)(vi) required production of final examination and inspection reports. The Commission is adopting its proposed amendment to Rule 230(a)(1)(vi). The amendment states that any final examination or inspection reports prepared by the Office of Compliance Inspections and Examinations, the Division of Market Regulation, or the Division of Investment Management must be produced only if the Division of Enforcement intends either to introduce them into evidence or to use them to refresh a witness's recollection.

The Commission provides examined parties with notice of examination findings in the examination process. As a result, the amendment limits the production of examination and inspection reports to circumstances where the Division of Enforcement intends to introduce the report into evidence, either in reliance on the report to prove its case, or to refresh the recollection of any witness. The amendment does not alter the requirement that the Division produce documents containing material exculpatory evidence as required by *Brady* v. *Maryland*.[23]

Current Rule 230(c) permits the hearing officer to require the Division of Enforcement to submit for review a list of withheld documents.[24] The Commission is adopting its proposed amendment to provide that, when documents are withheld, those documents may be identified by category instead of individual document. Under the amendment, the hearing officer retains discretion to determine when an identification by category is insufficient.[25]

15. Rule 231(a), relating to the production of witness statements, refers to ''any statement * * * that would be required to be produced by the Jencks Act, 18 U.S.C. 3500.'' The Commission is adopting, as proposed, an amendment that provides that the Commission will rely on the definition of ''statement'' contained in the Jencks Act[26] in applying this Rule.

16. Rule 232(e)(1) formerly allowed only the person to whom a subpoena is directed or a person who is an owner, creator, or the subject of the documents to be produced pursuant to a subpoena, to oppose the subpoena. Subpoenas directed at third party witnesses can be overly broad. Some recipients of such subpoenas may lack the sophistication or resources to dispute the scope of the subpoenas. The Commission therefore has determined to adopt its proposed amendment to allow any party to the proceeding to present arguments about whether a subpoena directed to any witness is unreasonable, oppressive, or unduly burdensome.

17. Current Rule 233 sets forth the basis for ordering a deposition.[27] The Commission is enacting its proposed amendment to allow the taking of a deposition of a witness who currently is within the United States, but who is expected to be outside the United States during the time of the hearing, provided that the deposition will serve the interests of justice, and that it appears that the party requesting the deposition did not procure the witness's absence.

18. Rule 350(b) requires the Secretary to retain documents offered into evidence, but excluded from the record, so that in the event of an objection, the Commission may consider any arguments that the documents should be admitted. The Commission is amending Rule 350(b) to eliminate the requirement that the Secretary also retain documents that are marked for identification but not offered into evidence.

19. Rule 351(a) is amended to delete a reference to a practice abandoned

[20] 17 CFR 201.104.

[21] 17 CFR 201.151.

[22] 17 CFR 201.201.

[23] 373 U.S. 83, 87 (1963).

[24] 17 CFR 201.230(c).

[25] The amendment of Rule 230 also corrects typographical errors in the cross-reference to paragraphs pursuant to which documents may be withheld.

[26] 18 U.S.C. 3500(e).

[27] 17 CFR 201.233.

several years ago in which the interested division took custody of the exhibits after a hearing and was responsible for having them sent to the Secretary. Currently, the court reporter takes custody of exhibits.

20. Rule 360(a)(2) directs the hearing officer to issue an initial decision within the time period specified in the order instituting proceedings. To address the hearing officer's inability to comply with this directive when a proceeding is stayed by order of the hearing officer or the Commission under Rule 210(c)(3),[28] the Commission is, as proposed, amending Rule 360(a)(2) to state that, in the event of a stay of the proceeding under the authority of Rule 210(c)(3), the specified time period for issuance of the initial decision, as well as any other time limits established in orders issued by the hearing officer under Rule 360(a)(2), will be automatically tolled during the period in which the stay is in effect.

21. Rule 360(b)(1) formerly provided that the Commission will enter an order of finality as to each party unless a party or aggrieved person timely files a petition for review of the initial decision or the Commission decides on its own initiative to review the initial decision. The rule is amended to provide further that the Commission will not enter an order of finality if a motion to correct a manifest error of fact in the initial decision is filed with the hearing officer.

22. Rule 360(d)(1) is amended to provide that an initial decision becomes final upon the Commission's issuance of a finality order. The prior rule provided that an initial decision became final on the lapse of time but also required the issuance of a finality order. The amendment makes clear when a decision becomes final. As adopted, Rule 360(d)(1) provides that notice of the order will appear in the *SEC Docket* and on the website.

Former Rule 360(d)(2) provided that the initial decision would not become final as to a party or person if a timely petition for review were filed by that party or person. New Rule 360(d)(1) provides that timely filing, by a party or an aggrieved person entitled to review, of a motion to correct an initial decision to the hearing officer, as well as a timely petition for review, will mean that the initial decision will not become the final decision of the Commission as to that party or person. The amendment also makes conforming changes to Rule 360(b) specifying that an initial decision shall include a statement reflecting the provisions of Rule 360(d).

Rule 410(b) is amended to provide that the time to file a petition for review is stayed until 21 days after resolution of any motion to correct an initial decision filed before the hearing officer. While a motion to correct is pending, a party need not file a petition for review to preserve its appeal rights.

23. The Commission adopts proposed Rule 400 to make clear that petitions for interlocutory review are ''disfavored'' and rarely will be granted. The amendment recognizes, however, that the Commission retains discretion to undertake such review on its own motion at any time.

24. As proposed, Rule 400 also is amended to state that it is the sole route for interlocutory review of determinations by a hearing officer, and the sole mechanism for appeal of actions delegated pursuant to 17 CFR 200.30–9 and 200.30–10.[29]

25. The Commission is adopting its proposed Rule 401(d)(1) to clarify that an applicant can seek a stay of an action by a self-regulatory organization only at the time an application for review is filed or thereafter. Filing an application for review brings the action before the Commission. Since Rule 420(c) is being amended to reduce the length of an application for review, the requirement that an application be filed either when or before a stay is sought will not impose a significant burden.

26. Rule 410(b), as proposed, is amended to permit an opposing party to file a cross-petition for review within ten days from the filing of a petition for review. This amendment will make it unnecessary for parties to file protective defensive petitions for review.

Rule 410(d) is deleted, as proposed, thus abolishing the opposition to the petition for review. The Commission believes that a motion for summary affirmance will permit the Commission to dispose of matters suited to more abbreviated review.

27. The Commission is adopting its proposed amendments to Rule 411(e), governing summary affirmance. Rule 411(e) is amended to provide a 21-day time limit after the filing of a petition for review for filing a motion for summary affirmance. The amendment also sets forth standards for granting and denying summary affirmance. Summary affirmance will be granted if the Commission finds that no issue raised in the initial decision warrants consideration by the Commission of further oral or written argument. Summary affirmance will be denied upon a reasonable showing that a prejudicial error was committed in the conduct of the proceeding or that the decision embodies an exercise of discretion or decision of law or policy that is important and that the Commission should review.

28. Section 19(d) of the Exchange Act requires a person who appeals from self-regulatory organization disciplinary action to do so within 30 days after the notice of determination is filed with the Commission and received by the aggrieved person ''or within such longer period as'' the Commission ''may determine.'' The Commission is adopting its proposed change to Rule 420(b) to make clear that an appeal from self-regulatory organization action must be filed within 30 days, absent a showing of extraordinary circumstances. This standard is consistent with prior Commission precedent.[30]

As proposed, Rule 420(c) is amended to provide that an application for review of a self-regulatory organization action is limited to two pages. Former Rule 420 contained language suggesting that the applicant's address could be used to serve only the record index. Rule 420(c) is amended to provide that the applicant identify where he or she may be served for all purposes.

29. Former Rule 450(c) sets limits on the number of pages in briefs. In accordance with Federal Rule of Appellate Procedure 32, the Commission is adopting its proposed word limits—14,000 for principal briefs and 7,000 for any reply brief. The amendment also states that motions to file oversized briefs are disfavored. In exceptional cases, however, where more pages may be needed to address the issues—for example, where the Division of Enforcement must address arguments by multiple respondents—the Commission may, upon motion, allow longer filings.

The proposal provided that, if a principal brief exceeded 30 pages in length, or a reply brief exceeded 15 pages in length, the attorney filing the brief (or an unrepresented party) was required to certify that the brief complied with the length limitation and to state the number of words in the brief. As adopted, this requirement has been extended to any representative of a party. The amendment permits the person certifying the length of the brief to rely on the word count of the word

[28] 17 CFR 201.210(c)(3). This rule will apply to all cases instituted on or after July 17, 2003, the effective date of the Commission's recent amendments to its Rules of Practice. Securities Act Rel. No. 8240, 68 FR 35787 (June 17, 2003).

[29] Rule 430 is amended to delete reference to 17 CFR 200.30–9 and 200.30–10.

[30] *See, e.g., Lance E. Van Alstyne,* 53 S.E.C. 1093, 1099 (1998) (Commission will not authorize late filing of appeals of self-regulatory organization proceedings absent extraordinary circumstances).

processing system used to prepare the brief.

The Commission has received briefs that sought to incorporate by reference briefs filed before the hearing officer in the proceeding on appeal. Incorporation of other pleadings by reference erodes the page-limit requirements of Rule 450(c). The Commission is adopting the proposed amendment that provides that pleadings incorporated by reference will be included in determining the word count of briefs. The amendment is intended to promote adherence to the length limitations of Rule 450(c) and to encourage parties to exercise judgment in selecting the arguments that best advance their positions rather than simply repeating previously formulated contentions.

30. Current Rule 451, governing oral argument, did not contemplate visual aids. As it proposed, the Commission is amending Rule 451(b) to prohibit the use of visual aids unless copies are provided to the Commission and parties at least five business days before the argument is to be held.[31]

31. Former Rule 470 specified a 15-page limit for a motion for reconsideration. There does not seem to be any reason for treating motions for reconsideration differently from other motions. As it proposed, the Commission is amending Rule 470 to limit the party seeking reconsideration to the same number of pages and the same format used for other motions under the Rules of Practice.

32. Current Rule 601 codifies existing practice for payment of disgorgement, interest, and penalties. As the Commission proposed, the amendment of Rule 601 standardizes the language currently used by hearing officers in initial decisions and the Commission in its orders, as follows:

(c) *Method of making payment.* Payment shall be made by United States postal money order, wire transfer, certified check, bank cashier's check, or bank money order made payable to the Securities and Exchange Commission. The payment shall be mailed or delivered to the office designated by this Commission. Payment shall be accompanied by a letter that identifies the name and number of the case and the name of the respondent making payment. A copy of the letter and the instrument of payment shall be sent to counsel for the Division of Enforcement.

[31] A further amendment conforms the language of Rule 451(b) to reflect Commission practice not to issue the order setting oral argument in a Commission administrative proceeding until the date for argument is set.

II. Administrative Procedure Act, Regulatory Flexibility Act, and Paperwork Reduction Act

The Commission finds, in accordance with section 553(b)(3)(A) of the Administrative Procedure Act,[32] that this revision relates solely to agency organization, procedure, or practice. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice, opportunity for public comment, and publication. The Regulatory Flexibility Act[33] therefore does not apply. Nonetheless, the Commission had previously determined that it would be useful to publish the proposed rule changes for notice and comment before adoption. The Commission considered all comments received. Because these rules relate to ''agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties,'' they are not subject to the Small Business Regulatory Enforcement Fairness Act.[34]

These rules do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.[35]

III. Costs and Benefits of the Rules and Amendments

The Sarbanes-Oxley Act authorizes the Commission to review disciplinary actions by the Public Company Accounting Oversight Board as well as actions resulting in disapproval of registration of public accounting firms. In response, the Commission has revised certain of its rules in order to enhance the transparency and facilitate parties' understanding of the applicability of the review process to Board proceedings. The Sarbanes-Oxley Act also provides that, where the Commission or a hearing officer in a Commission administrative proceeding enters an order requiring disgorgement and a civil money penalty, the Commission may create a ''Fair Fund'' combining the disgorgement and the civil money penalty to be disbursed for the benefit of the victims of the securities law violations at issue in the proceeding. The Commission has enacted rules for the submission and administration of Fair Fund plans and disgorgement plans. The Commission also has amended other provisions of the rules.

Taken as a whole, the Commission's Rules create governmental review and remedial processes. That is, they are procedural and administrative in nature. The benefits to the parties are the familiar benefits of due process: Notice, opportunity to be heard, efficiency, and fairness. The cost of these processes, on the other hand, falls largely on the oversight bodies.

For purposes of cost/benefit analysis, given the procedural nature of these Rules, we believe that the regulatory provisions are best viewed as a whole. To the extent possible, we discuss specific benefits and costs that can be more narrowly associated with separate provisions. However, because there are so many provisions, and because the costs tend to be primarily governmental, we do not provide separate sections for our respective cost and benefit analyses. Rather, we simply identify each provision proposed and discuss any benefits and costs that may be associated with it beyond the more general points summarized above.

Rule 19d–4(b) requires the Board to file with the Commission and serve on the public accounting firm a notice of disapproval of registration within 30 days of the Board's action. Rule 19d–4(c) imposes on the Board a similar filing and service requirement for notices of any disciplinary sanction other than a disapproval of registration. Timely notice is a fundamental aspect of due process. It benefits those who receive notice by allowing them to plan and take action in light of the Board's findings. Timely filing with the Commission lets the Commission know of the conclusion of Board proceedings so that it can exert oversight over the quality and fairness of those proceedings, which benefits parties to the proceedings as well as the general public. These rules will impose a small administrative cost on the Board.

Rules 440 and 441 provide for Commission review of Board actions. Rule 440 allows review upon application of a person aggrieved by a final Board disciplinary sanction, including disapproval of a completed application for registration of a public accounting firm. Rule 441 permits Commission review of Board disciplinary sanctions upon the Commission's own motion. The Rules pertain to the review mechanism required by the Sarbanes-Oxley Act, informing those upon whom Board sanctions are imposed of the option of Commission review and instructing them about procedures involved in initiating the review process.

Commission review of Board findings benefits parties to Board proceedings (and, to a lesser extent, the general public) by protecting against arbitrary, capricious, or otherwise unlawful

[32] 5 U.S.C. 553(b)(3)(A).

[33] 5 U.S.C. 601 *et seq.*

[34] 5 U.S.C. 804(3)(C).

[35] 44 U.S.C. 3501 *et seq.*

treatment. Review also allows the Commission to exercise a check on, and protect the public interest in, the quality and consistency of Board findings and determinations.

Parties involved in review proceedings will incur legal and other costs. Review upon application by a person aggrieved, under Rule 440, is optional. Thus, a party would incur these costs only if it expected a net benefit from the review process. In the case of review upon the Commission's own motion under Rule 441, however, the parties involved might otherwise have chosen to avoid incurring the costs.

In accordance with section 105(e)(1) of the Sarbanes-Oxley Act, Rule 440(c) provides that filing an application for review with the Commission acts as a stay of the Board's action unless the Commission orders otherwise. Rule 401(e) allows: (1) Persons aggrieved by such an automatic stay to ask the Commission to lift the stay; (2) the Commission to lift such a stay summarily, without notice and opportunity for a hearing; and (3) persons opposing the lifting of such a stay to file an opposition.

Rule 440(c) benefits the party upon whom Board sanctions have been imposed by allowing that party an opportunity to be heard in the review process before the Board's sanctions take effect. The automatic stay imposes a cost upon third parties who would benefit if the sanctions went into place immediately.

Allowing a person aggrieved by the automatic stay to ask to have the stay lifted benefits the aggrieved person by offering the option of a possible earlier termination of the stay. Those availing themselves of this option will incur legal and other costs. Because the procedure is optional, they will presumably do so only if they conclude that doing so yields an expected net benefit. Similarly, allowing opposition to a motion to lift permits those opposing the motion an opportunity to be heard. Although opposing a motion could involve legal and other expenses, because opposition is optional, parties would incur those costs only if they expected a net benefit from opposing.

Allowing the Commission to lift a stay summarily could benefit persons aggrieved by the stay by providing prompt and inexpensive relief. At the same time, those who might oppose the lifting of the stay would be denied notice and an opportunity to be heard in connection with the lifting of the stay.

Section 308(a) of the Sarbanes Oxley-Act provides that, in a Commission administrative proceeding where the Commission or a hearing officer enters an order requiring disgorgement and a civil money penalty, the Commission may create a ''Fair Fund'' by including the civil penalty with the disgorgement amount. The Commission is required to disburse money from a Fair Fund for the benefit of the victims of the securities law violations at issue in the proceeding.

Rule 1101 authorizes the Commission to create a Fair Fund in any administrative proceeding in which a final order is entered imposing disgorgement and a civil money penalty. The Commission also may create a Fair Fund if it approves a settlement of an administrative proceeding that provides for payment of disgorgement and a civil money penalty. Where the relative value of the ill-gotten gains and the number of potential claimants results in high administrative costs and *de minimis* distributions to investors, the Commission would not expect to create a Fair Fund. The disgorgement and civil penalty amounts would be paid directly to the United States Treasury.

Creating and administering Fair Funds benefits victims of securities law violations, who are more likely to be made whole. Allowing monies that otherwise would go into a Fair Fund to be paid to the Treasury where investors would receive only *de minimis* distributions will prevent those monies from being consumed by administrative costs, although at a cost to victims who might have received a minimal payment from a Fair Fund.

Rule 102(d)(4) is amended to allow a person seeking to withdraw his or her appearance before the Commission in a representative capacity to file a notice of withdrawal rather than the motion to withdraw that was required under the former Rule. Filing a notice preserves the benefits of the existing requirement by giving the Commission and the parties timely notice of withdrawal. Preparing and filing a notice should be less expensive than preparing and filing a motion. Additionally, this amendment increases efficiency by eliminating the need for the Commission or a hearing officer to rule on a motion for withdrawal.

The amendment of Rule 150(c)(4) deletes the requirements that parties who choose to serve each other by facsimile transmission (1) agree to do so in a signed writing, and (2) confirm receipt of each document by a manually signed receipt. Elimination of these requirements results in lower costs to the serving parties. However, eliminating the requirement of a signed receipt could make it more difficult to prove that a transmission was received.

The amendment of Rule 151 allows parties to file documents with the Commission by facsimile transmission. This amendment provides parties an additional option for transmitting documents to the Commission. Facsimile filing allows the Commission to receive and be able to address documents in as timely a fashion as possible. Costs of transmission by facsimile are likely to be lower than overnight or courier fees. The amendment does not impose any new costs, since the existing methods for filing with the Commission remain available.

The amendment to Rule 154 establishes a combined page limit of 15 pages for a motion and a brief in support of the motion. The 15-page limit also applies to a brief in opposition to a motion and to any reply brief. The amendment to Rule 450(c) provides that pleadings incorporated by reference will be included in determining the page count of briefs. Reducing page limits may result in lower legal costs to the parties. Limiting the number of pages submitted also keeps proceedings efficient.

The amendment of Rule 233 allows the taking of a deposition of a witness, then within the United States, who is expected to be outside the United States at the time of an administrative hearing, so long as the deposition will serve the interests of justice and it appears that the party requesting the deposition did not procure the witness's absence. The amendment serves the interests of justice by making available a statement that otherwise might not have been made part of the record. Using a deposition results in the absence from a hearing of a witness who otherwise would have appeared. This results in the hearing officer's having no opportunity to assess demeanor. However, since the Rule allows a deposition only where it appears that the party requesting the deposition did not procure the witness's absence, such a series of events should rarely occur.

The remaining amendments clarify existing practice, relate to internal agency management, increase the efficiency of proceedings, or promote due process.

The Commission requested data to quantify the costs and the value of the benefits identified. We received no comments in response to this request.

IV. Effect on Efficiency, Competition and Capital Formation

Section 2(b) of the Securities Act of 1933,[36] section 3(f) of the Exchange Act,[37] section 2(c) of the Investment Company Act of 1940,[38] and section 202(c) of the Investment Advisers Act of 1940[39] require us, when engaging in rulemaking that requires us to consider or determine whether an act 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[40] prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act's purposes.

These rules are intended to enhance the transparency and facilitate parties' understanding of the applicability of the Commission review process to Board proceedings. The rules and amendments also include regulatory provisions for the submission and administration of Fair Funds plans and disgorgement plans. They are intended to clarify existing practice and increase the efficiency of Commission enforcement and self-regulatory organization disciplinary review proceedings.

The rules and amendments apply to all persons involved in administrative proceedings before the Commission. Therefore, the Commission does not expect the proposed rules and amendments to have an anti-competitive effect. To the extent the rules and amendments foster making whole victims of securities laws violations and increase the transparency of the Commission's administrative practice and the efficiency of its proceedings, there should be an increase in investor confidence in market fairness and efficiency. However, the magnitude of the effect of the amendments in this regard is difficult to quantify. We requested comment on the possible effects of our rule proposals on efficiency, competition, and capital formation. We received no comments in response to this request.

V. Statutory Basis for the Rules

These amendments to the Rules of Practice and related provisions are being adopted pursuant to statutory authority granted to the Commission, including section 3 of the Sarbanes-Oxley Act, 15 U.S.C. 7202; section 19 of the Securities Act, 15 U.S.C. 77s; sections 4A, 19, and 23 of the Exchange Act, 15 U.S.C. 78s and 78w; section 20 of the Public Utility Holding Company Act, 15 U.S.C. 79t; section 319 of the Trust Indenture Act, 15 U.S.C. 77sss; sections 38 and 40 of the Investment Company Act, 15 U.S.C. 80a–37 and 80a–39; and section 211 of the Investment Advisers Act, 15 U.S.C. 80b–11.

[36] 15 U.S.C. 77b(b).
[37] 15 U.S.C. 78c(f).
[38] 15 U.S.C. 80a–2(c).
[39] 15 U.S.C. 80b–2(c).
[40] 15 U.S.C. 78w(a)(2).

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government Agencies).

17 CFR Part 201

Administrative practice and procedure.

17 CFR Part 240

Reporting and recordkeeping requirements; Securities.

Text of Adopted Rules

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

■ 1. The general authority citation for part 200, subpart A is revised to read as follows:

Subpart A—Organization and Program Management

Authority: 15 U.S.C. 77s, 77o, 77sss, 78d, 78d–1, 78d–2, 78w, 78*ll*(d), 78mmm, 79t, 80a–37, 80b–11, and 7202, unless otherwise noted.

* * * * *

§ 200.21 [Amended]

■ 2. In § 200.21, paragraph (b), remove the words ''Rule 2(e) of the Commission's Rules of Practice (§ 201.2(e) of this chapter)'', and in their place, add the words ''Rule 102(e) of the Commission's Rules of Practice (§ 201.102(e) of this chapter)''.

■ 3. Section 200.30–7 is amended by revising the introductory text of paragraph (a) and paragraphs (a)(5), (a)(6), and (a)(11) to read as follows:

§ 200.30–7 Delegation of authority to Secretary of the Commission.

* * * * *

(a) With respect to proceedings conducted pursuant to the Securities Act of 1933, 15 U.S.C. 77a *et seq.*, the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*, the Public Utility Holding Company Act of 1935, 15 U.S.C. 79a *et seq.*, the Trust Indenture Act of 1939, 15 U.S.C. 77aaa *et seq.*, the Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*, the Investment Advisers Act of 1940, 15 U.S.C. 80b–1 *et seq.*, the Securities Investor Protection Act of 1970, 15 U.S.C. 78aaa *et seq.*, the provisions of Rule 102(e) of the Commission's Rules of Practice, Section 201.102(e) of this chapter, and Title I of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7211–7219;

* * * * *

(5) To permit the filing of briefs with the Commission exceeding 50 pages in length, pursuant to Rule 450(c) of the Commission's Rules of Practice, § 201.450(c) of this chapter;

(6) To certify records of proceedings upon which are entered orders the subject of review in courts of appeals pursuant to section 9 of the Securities Act of 1933, 15 U.S.C. 77i, section 25 of the Securities Exchange Act of 1934, 15 U.S.C. 78y, section 24 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79x, section 322(a) of the Trust Indenture Act of 1939, 15 U.S.C. 77vvv(a), section 43 of the Investment Company Act of 1940, 15 U.S.C. 80a–42, section 213 of the Investment Advisers Act of 1940, 15 U.S.C. 80b–13, and Title I of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7211–7219;

* * * * *

(11) To publish pursuant to Rule 1103 of the Commission's Rules of Practice (§ 201.1103 of this chapter) notice for fair fund and disgorgement plans, and if no negative comments are received, to issue orders approving proposed fair fund plans and disgorgement plans pursuant to Rule 1104 of the Commission's Rules of Practice (§ 201.1104 of this chapter). Upon the motion of the staff for good cause shown, to approve the publication of proposed fair fund plans and disgorgement plans that omit plan elements required by Rule 1101 of the Commission's Rules of Practice (§ 201.1101 of this chapter).

* * * * *

■ 4. Section 200.30–10 is amended by:

■ a. Removing the authority citations following the sections; and

■ b. Revising the introductory text of paragraph (a) and paragraph (a)(5).

The revisions read as follows:

§ 200.30–10 Delegation of authority to Chief Administrative Law Judge.

* * * * *

(a) With respect to proceedings conducted before an administrative law judge, pursuant to the Securities Act of 1933, 15 U.S.C. 77a *et seq.*, the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*, the Public Utility

Holding Company Act of 1935, 15 U.S.C. 79a *et seq.*, the Trust Indenture Act of 1939, 15 U.S.C. 77aaa *et seq.*, the Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*, the Investment Advisers Act of 1940, 15 U.S.C. 80b–1 *et seq.*, the Securities Investor Protection Act of 1970, 15 U.S.C. 78aaa *et seq.*, and the provisions of Rule 102(e) of the Commission's Rules of Practice, § 201.102(e) of this chapter:

* * * * *

(5) To permit the filing of briefs exceeding 50 pages in length, pursuant to Rule 450(c) of the Commission's Rules of Practice, § 201.450(c) of this chapter;

* * * * *

■ 5. Section 200.30–14 is amended by:
■ a. Revising the introductory text of paragraph (g)(1) and of paragraphs (g)(1)(vii), (g)(4), (g)(5), and (g)(7); and
■ b. Adding paragraph (g)(8).

The revisions and addition read as follows:

§ 200.30–14 Delegation of authority to the General Counsel.

* * * * *

(g)(1) With respect to proceedings conducted pursuant to the Securities Act of 1933, 15 U.S.C. 77a *et seq.*, the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*, the Public Utility Holding Company Act of 1935, 15 U.S.C. 79a *et seq.*, the Trust Indenture Act of 1939, 15 U.S.C. 77aaa *et seq.*, the Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*, the Investment Advisers Act of 1940, 15 U.S.C. 80b–1 *et seq.*, the Securities Investor Protection Act of 1970, 15 U.S.C. 78aaa *et seq.*, the provisions of Rule 102(e) of the Commission Rules of Practice, § 201.102(e) of this chapter, and Title I of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7211–7219:

* * * * *

(vii) To request additional briefs or grant requests for the submission of late or additional briefs, or the acceptance of affidavits or other material for inclusion in the record or in support of motions or petitions addressed to the Commission.

* * * * *

(4) With respect to proceedings conducted under sections 19(d), (e), and (f) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(d), (e), and (f), and Title I of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7211–7219, to determine that an application for review under any of those sections has been abandoned, under the provisions of Rule 420 or 440 of the Commission's Rules of Practice, § 201.420 or 201.440 of this chapter, or otherwise, and accordingly to issue an order dismissing the application.

(5) With respect to proceedings conducted pursuant to the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*, the Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*, the Investment Advisers Act of 1940, 15 U.S.C. 80b–1 *et seq.*, the provisions of Rule 102(e) of the Commission's Rules of Practice, § 201.102(e) of this chapter, and Title I of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7211–7219, to determine applications to stay Commission orders pending appeal of those orders to the federal courts and to determine application to vacate such stays.

* * * * *

(7) In connection with Commission review of actions taken by self-regulatory organizations pursuant to sections 19(d), (e), and (f) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(d), (e), and (f), or by the Public Company Accounting Oversight Board pursuant to Title I of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7211–7219, to grant or deny requests for oral argument in accordance with the provisions of Rule 451 of the Commission's Rules of Practice, § 201.451 of this chapter.

(8) In connection with Commission review of actions taken by the Public Company Accounting Oversight Board pursuant to Title I of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7211–7219, to determine whether to lift the automatic stay of a disciplinary sanction.

* * * * *

Subpart B—Disposition of Commission Business

■ 6. The authority citation for part 200, subpart B continues to read as follows:

Authority: 5 U.S.C. 552b; 15 U.S.C. 78d–1 and 78w.

§ 200.43 [Amended]

■ 7. In § 200.43, paragraph (c)(3), remove the words ''Rule 26 of the Commission's rules of practice, 17 CFR 201.26'' and, in their place, add the words ''Rules 430 and 431 of the Commission's Rules of Practice, §§ 201.430 and 201.431 of this chapter''.

■ 8. The authority citation for part 200, subpart F, is revised to read as follows:

Subpart F—Code of Behavior Governing Ex Parte Communications Between Persons Outside the Commission and Decisional Employees

Authority: 15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11, and 7202; and 5 U.S.C. 557.

■ 9. Section 200.111 is amended by:
■ a. Revising paragraph (c)(1)(ii);
■ b. Redesignating paragraph (c)(1)(iii) as paragraph (c)(1)(iv); and
■ c. Adding new paragraph (c)(1)(iii).

The revision and addition read as follows:

§ 200.111 Prohibitions; application; definitions.

* * * * *

(c) * * *

(1) * * *

(ii) That in proceedings under section 19(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(d), these prohibitions shall commence at the time that a copy of an application for review has been filed with the Commission and served on the self-regulatory organization.

(iii) That in proceedings under Title I of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7211–7219, these prohibitions shall commence at the time that a copy of an application for review has been filed with the Commission and served on the Public Company Accounting Oversight Board; and

* * * * *

PART 201—RULES OF PRACTICE

Subpart D—Rules of Practice

■ 10. The authority citation for part 201, subpart D, is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77h–1, 77j, 77s, 77u, 78c(b), 78d–1, 78d–2, 78*l*, 78m, 78n, 78*o*(d), 78*o*–3, 78s, 78u–2, 78u–3, 78v, 78w, 79c, 79s, 79t, 79z–5a, 77sss, 77ttt, 80a–8, 80a–9, 80a–37, 80a–38, 80a–39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, 80b–12, 7202, 7215, and 7217.

■ 11. Section 201.100 is amended by adding paragraph (c) to read as follows:

§ 201.100 Scope of the rules of practice.

* * * * *

(c) The Commission, upon its determination that to do so would serve the interests of justice and not result in prejudice to the parties to the proceeding, may by order direct, in a particular proceeding, that an alternative procedure shall apply or that compliance with an otherwise applicable rule is unnecessary.

■ 12. Section 201.101 is amended by:
■ a. Revising paragraph (a)(9);
■ b. Removing the word ''and'' at the end of paragraph (a)(10);
■ c. Removing the period at the end of paragraph (a)(11), and in its place adding ''; and''; and
■ d. Adding paragraph (a)(12).

The revision and addition read as follows:

§ 201.101 Definitions.

(a) * * *

(9) *Proceeding* means any agency process initiated:

(i) By an order instituting proceedings; or

(ii) By the filing, pursuant to § 201.410, of a petition for review of an initial decision by a hearing officer; or

(iii) By the filing, pursuant to § 201.420, of an application for review of a self-regulatory organization determination; or

(iv) By the filing, pursuant to § 201.430, of a notice of intention to file a petition for review of a determination made pursuant to delegated authority; or

(v) By the filing, pursuant to § 201.440, of an application for review of a determination by the Public Company Accounting Oversight Board; or

(vi) By the filing, pursuant to § 240.11Aa3–1(f) of this chapter, of an application for review of an action or failure to act in connection with the implementation or operation of any effective transaction reporting plan; or

(vii) By the filing, pursuant to § 240.11Aa3–2(e) of this chapter, of an application for review of an action taken or failure to act in connection with the implementation or operation of any effective national market system plan; or

(viii) By the filing, pursuant to Section 11A(b)(5) of the Securities Exchange Act of 1934, of an application for review of a determination of a registered securities information processor;

* * * * *

(12) *Board* means the Public Company Accounting Oversight Board.

* * * * *

■ 13. Section 201.102 is amended by revising paragraph (d)(4) to read as follows:

§ 201.102 Appearance and practice before the Commission.

* * * * *

(d) * * *

(4) *Withdrawal.* Any person seeking to withdraw his or her appearance in a representative capacity shall file a notice of withdrawal with the Commission or the hearing officer. The notice shall state the name, address, and telephone number of the withdrawing representative; the name, address, and telephone number of the person for whom the appearance was made; and the effective date of the withdrawal. If the person seeking to withdraw knows the name, address, and telephone number of the new representative, or knows that the person for whom the appearance was made intends to represent him- or herself, that information shall be included in the notice. The notice must be served on the parties in accordance with § 201.150. The notice shall be filed at least five days before the proposed effective date of the withdrawal.

* * * * *

■ 14. Section 201.111 is amended by revising paragraph (h) to read as follows:

§ 201.111 Hearing officer: Authority.

* * * * *

(h) Subject to any limitations set forth elsewhere in these Rules of Practice, considering and ruling upon all procedural and other motions, including a motion to correct a manifest error of fact in the initial decision, provided that such a motion to correct is filed within ten days of the initial decision;

* * * * *

■ 15. Section 201.141 is amended by:

■ a. Revising the section heading; and

■ b. Revising paragraphs (a)(3) and (b) to read as follows:

The revisions read as follows:

§ 201.141 Orders and decisions: Service of orders instituting proceedings and other orders and decisions.

(a) * * *

(3) *Record of service.* The Secretary shall maintain a record of service on parties (in hard copy or computerized format), identifying the party given notice, the method of service, the date of service, the address to which service was made, and the person who made service. If service is made in person, the certificate of service shall state, if available, the name of the individual to whom the order was given. If service is made by U.S. Postal Service certified or Express Mail, the Secretary shall maintain the confirmation of receipt or of attempted delivery. If service is made to an agent authorized by appointment to receive service, the certificate of service shall be accompanied by evidence of the appointment.

* * * * *

(b) *Service of orders or decisions other than an order instituting proceedings.* Written orders or decisions issued by the Commission or by a hearing officer shall be served promptly on each party pursuant to any method of service authorized under paragraph (a) of this section or § 201.150(c)(1)–(3). Such orders or decisions may also be served by facsimile transmission if the party to be served has agreed to accept such service in a writing, signed by the party, and has provided the Commission with information concerning the facsimile machine telephone number and hours of facsimile machine operation. Service of orders or decisions by the Commission, including those entered pursuant to delegated authority, shall be made by the Secretary or, as authorized by the Secretary, by a member of an interested division. Service of orders or decisions issued by a hearing officer shall be made by the Secretary or the hearing officer.

■ 16. Section 201.150 is amended by revising paragraph (c)(4) to read as follows:

§ 201.150 Service of papers by parties.

* * * * *

(c) * * *

(4) Transmitting the papers by facsimile transmission where the following conditions are met:

(i) The persons so serving each other have provided the Commission and the parties with notice of the facsimile machine telephone number to be used and the hours of facsimile machine operation;

(ii) The transmission is made at such a time that it is received during the Commission's business hours as defined in § 201.104; and

(iii) The sender of the transmission previously has not been served in accordance with § 201.150 with a written notice from the recipient of the transmission declining service by facsimile transmission.

* * * * *

■ 17. Section 201.151 is amended by revising paragraph (a) to read as follows:

§ 201.151 Filing of papers with the Commission: Procedure.

(a) *When to file.* All papers required to be served by a party upon any person shall be filed contemporaneously with the Commission. Papers required to be filed with the Commission must be received within the time limit, if any, for such filing. Filing with the Commission may be made by facsimile transmission if the party also contemporaneously transmits to the Commission a non-facsimile original with a manual signature. However, any person filing with the Commission by facsimile transmission will be responsible for assuring that the Commission receives a complete and legible filing within the time limit set for such filing.

* * * * *

■ 18. Section 201.152 is amended by revising paragraph (a)(2) to read as follows:

§ 201.152 Filing of papers: Form.

(a) * * *

(2) Be typewritten or printed in 12-point or larger typeface or otherwise

reproduced by a process that produces permanent and plainly legible copies;

* * * * *

■ 19. Section 201.154 is amended by revising paragraph (c) to read as follows:

§ 201.154 Motions.

* * * * *

(c) *Length limitation.* A motion, together with the brief in support of the motion, the brief in opposition to the motion, or any reply brief, shall not exceed 15 pages, exclusive of pages containing any table of contents or table of authorities. The page limit shall not apply to any addendum that consists solely of copies of applicable cases, pertinent legislative provisions or rules, or relevant exhibits. Requests for leave to file motions and briefs in excess of 15 pages are disfavored.

■ 20. Section 201.160 is amended by revising paragraph (b) to read as follows:

§ 201.160 Time computation.

* * * * *

(b) *Additional time for service by mail.* If service is made by mail, three days shall be added to the prescribed period for response unless an order of the Commission or the hearing officer specifies a date certain for filing. In the event that an order of the Commission or the hearing officer specifies a date certain for filing, no time shall be added for service by mail.

■ 21. Section 201.201 is amended by:

■ a. Revising the section heading;

■ b. Designating the current text as paragraph (a) and adding a paragraph heading; and

■ c. Adding paragraph (b).

The revision and additions read as follows:

§ 201.201 Consolidation and severance of proceedings.

(a) *Consolidation.* * * *

(b) *Severance.* By order of the Commission, any proceeding may be severed with respect to some or all parties. Any motion to sever must be made solely to the Commission and must include a representation that a settlement offer is pending before the Commission or otherwise show good cause.

■ 22. Section 201.202 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 201.202 Specification of procedures by parties in certain proceedings.

(a) *Motion to specify procedures.* In any proceeding other than an enforcement or disciplinary proceeding, a proceeding to review a determination by a self-regulatory organization pursuant to §§ 201.420 and 201.421, or a proceeding to review a determination of the Board pursuant to §§ 201.440 and 201.441, a party may, at any time up to 20 days prior to the start of a hearing, make a motion to specify the procedures necessary or appropriate for the proceeding with particular reference to:

* * * * *

■ 23. Section 201.210 is amended by revising the introductory text of paragraph (a), revising paragraph (a)(1) and the introductory text of paragraphs (b)(1) and (c) read to read as follows:

§ 201.210 Parties, limited participants and amici curiae.

(a) *Parties in an enforcement or disciplinary proceeding, a proceeding to review a self-regulatory organization determination, or a proceeding to review a Board determination.*

(1) *Generally.* No person shall be granted leave to become a party or a non-party participant on a limited basis in an enforcement or disciplinary proceeding, a proceeding to review a determination by a self-regulatory organization pursuant to §§ 201.420 and 201.421, or a proceeding to review a determination by the Board pursuant to §§ 201.440 and 201.441, except as authorized by paragraph (c) of this section.

* * * * *

(b) * * * (1) *Generally.* In any proceeding, other than an enforcement proceeding, a disciplinary proceeding, a proceeding to review a self-regulatory determination, or a proceeding to review a Board determination, any person may seek leave to intervene as a party by filing a motion setting forth the person's interest in the proceeding:

* * * * *

(c) *Leave to participate on a limited basis.* In any proceeding, other than an enforcement proceeding, a disciplinary proceeding, a proceeding to review a self-regulatory determination, or a proceeding to review a Board determination, any person may seek leave to participate on a limited basis as a non-party participant as to any matter affecting the person's interests:

* * * * *

■ 24. Section 201.230 is amended by revising paragraphs (a)(1)(vi) and (c) to read as follows:

§ 201.230 Enforcement and disciplinary proceedings: Availability of documents for inspection and copying.

* * * * *

(a) * * *

(1) * * *

(vi) Any final examination or inspection reports prepared by the Office of Compliance Inspections and Examinations, the Division of Market Regulation, or the Division of Investment Management, if the Division of Enforcement intends either to introduce any such report into evidence or to use any such report to refresh the recollection of any witness.

* * * * *

(c) *Withheld document list.* The hearing officer may require the Division of Enforcement to submit for review a list of documents or categories of documents withheld pursuant to paragraphs (b)(1)(i) through (b)(1)(iv) of this section or to submit any document withheld, and may determine whether any such document should be made available for inspection and copying. When similar documents are withheld pursuant to paragraphs (b)(1)(i) through (b)(1)(iv) of this section, those documents may be identified by category instead of by individual document. The hearing officer retains discretion to determine when an identification by category is insufficient.

* * * * *

■ 25. Section 201.231 is amended by revising paragraph (a) to read as follows:

§ 201.231 Enforcement and disciplinary proceedings: Production of witness statements.

(a) *Availability.* Any respondent in an enforcement or disciplinary proceeding may move that the Division of Enforcement produce for inspection and copying any statement of any person called or to be called as a witness by the Division of Enforcement that pertains, or is expected to pertain, to his or her direct testimony and that would be required to be produced pursuant to the Jencks Act, 18 U.S.C. 3500. For purposes of this section, *statement* shall have the meaning set forth in 18 U.S.C. 3500(e). Such production shall be made at a time and place fixed by the hearing officer and shall be made available to any party, provided, however, that the production shall be made under conditions intended to preserve the items to be inspected or copied.

* * * * *

■ 26. Section 201.232 is amended by revising paragraph (e)(1) to read as follows:

§ 201.232 Subpoenas.

* * * * *

(e) * * * (1) Any person to whom a subpoena is directed, or who is an owner, creator or the subject of the documents that are to be produced pursuant to a subpoena, or any party may, prior to the time specified therein for compliance, but in no event more than 15 days after the date of service of

such subpoena, request that the subpoena be quashed or modified. Such request shall be made by application filed with the Secretary and served on all parties pursuant to § 201.150. The party on whose behalf the subpoena was issued may, within five days of service of the application, file an opposition to the application. If a hearing officer has been assigned to the proceeding, the application to quash shall be directed to that hearing officer for consideration, even if the subpoena was issued by another person.

* * * * *

■ 27. Section 201.233 is amended by revising paragraph (b) to read as follows:

§ 201.233 Deposition upon oral examination.

* * * * *

(b) *Required finding when ordering a deposition.* In the discretion of the Commission or the hearing officer, an order for a deposition may be issued upon a finding that the prospective witness will likely give testimony material to the proceeding; that it is likely the prospective witness, who is then within the United States, will be unable to attend or testify at the hearing because of age, sickness, infirmity, imprisonment, other disability, or absence from the United States, unless it appears that the absence of the witness was procured by the party requesting the deposition; and that the taking of a deposition will serve the interests of justice.

* * * * *

■ 28. Section 201.350 is amended by revising paragraph (b) to read as follows:

§ 201.350 Record in proceedings before hearing officer; retention of documents; copies.

* * * * *

(b) *Retention of documents not admitted.* Any document offered into evidence but excluded shall not be considered a part of the record. The Secretary shall retain any such document until the later of the date upon which a Commission order ending the proceeding becomes final, or the conclusion of any judicial review of the Commission's order.

* * * * *

■ 29. Section 201.351 is amended by revising paragraph (a) to read as follows:

§ 201.351 Transmittal of documents to Secretary; record index; certification.

(a) *Transmittal from hearing officer to Secretary of partial record index.* The hearing officer may, at any time, transmit to the Secretary motions, exhibits or any other original documents filed with or accepted into evidence by the hearing officer, together with a list of such documents.

* * * * *

■ 30. Section 201.360 is amended by:

■ a. Adding a sentence at the end of paragraph (a)(2);

■ b. Revising paragraphs (b)(1), (b)(2), and (d); and

■ c. Removing paragraph (e).

The addition and revisions read as follows:

§ 201.360 Initial decision of hearing officer.

(a)(1) * * *

(2) * * * If a stay is granted pursuant to § 201.210(c)(3), the time period specified in the order instituting proceedings in which the hearing officer's initial decision must be filed with the Secretary, as well as any other time limits established in orders issued by the hearing officer in the proceeding, shall be automatically tolled during the period while the stay is in effect.

* * * * *

(b) * * *

(1) The Commission will enter an order of finality as to each party unless a party or an aggrieved person entitled to review timely files a petition for review of the initial decision or a motion to correct a manifest error of fact in the initial decision with the hearing officer, or the Commission determines on its own initiative to review the initial decision; and

(2) If a party or an aggrieved person entitled to review timely files a petition for review or a motion to correct a manifest error of fact in the initial decision with the hearing officer, or if the Commission takes action to review as to a party or an aggrieved person entitled to review, the initial decision shall not become final as to that party or person.

* * * * *

(d) *Finality.* (1) If a party or an aggrieved person entitled to review timely files a petition for review or a motion to correct a manifest error of fact in the initial decision, or if the Commission on its own initiative orders review of a decision with respect to a party or a person aggrieved who would be entitled to review, the initial decision shall not become final as to that party or person.

(2) If a party or aggrieved person entitled to review fails to file timely a petition for review or a motion to correct a manifest error of fact in the initial decision, and if the Commission does not order review of a decision on its own initiative, the Commission will issue an order that the decision has become final as to that party. The decision becomes final upon issuance of the order. The order of finality shall state the date on which sanctions, if any, take effect. Notice of the order shall be published in the *SEC Docket* and on the SEC Web site.

■ 31. Section 201.400 is amended by revising paragraph (a) to read as follows:

§ 201.400 Interlocutory review.

(a) *Availability.* The Commission may, at any time, on its own motion, direct that any matter be submitted to it for review. Petitions by parties for interlocutory review are disfavored, and the Commission ordinarily will grant a petition to review a hearing officer ruling prior to its consideration of an initial decision only in extraordinary circumstances. The Commission may decline to consider a ruling certified by a hearing officer pursuant to paragraph (c) of this section or the petition of a party who has been denied certification if it determines that interlocutory review is not warranted or appropriate under the circumstances. This section is the exclusive remedy for review of a hearing officer's ruling prior to Commission consideration of the entire proceeding and is the sole mechanism for appeal of actions delegated pursuant to §§ 200.30–9 and 200.30–10 of this chapter.

* * * * *

■ 32. Section 201.401 is amended by:

■ a. Revising the section heading and paragraph (d)(1); and

■ b. Adding paragraph (e).

The revisions and addition read as follows:

§ 201.401 Consideration of stays.

* * * * *

(d) * * *

(1) *Availability.* A motion for a stay of an action by a self-regulatory organization for which the Commission is the appropriate regulatory agency, for which action review may be sought pursuant to § 201.420, may be made by any person aggrieved thereby at the time an application for review is filed in accordance with § 201.420 or thereafter.

* * * * *

(e) *Lifting of stay of action by the Public Company Accounting Oversight Board.* (1) *Availability.* Any person aggrieved by a stay of action by the Board entered in accordance with 15 U.S.C. 7215(e) for which review has been sought pursuant to § 201.440 or which the Commission has taken up on its motion pursuant to § 201.441 may make a motion to lift the stay. The Commission may, at any time, on its own motion determine whether to lift the automatic stay.

(2) *Summary action.* The Commission may lift a stay summarily, without notice and opportunity for hearing.

(3) *Expedited consideration.* The Commission may expedite consideration of a motion to lift a stay of Board action, consistent with the Commission's other responsibilities. Where consideration is expedited, persons opposing the lifting of the stay may file a statement in opposition within two days of service of the motion requesting lifting of the stay unless the Commission, by written order, shall specify a different period.

■ 33. Section 201.410 is amended by:

■ a. Revising paragraph (b); and

■ b. Removing and reserving paragraph (d).

The revision reads as follows:

§ 201.410 Appeal of initial decisions by hearing officers.

* * * * *

(b) *Procedure.* The petition for review of an initial decision shall be filed with the Commission within such time after service of the initial decision as prescribed by the hearing officer pursuant to § 201.360(b) unless a party has filed a motion to correct an initial decision with the hearing officer. If such correction has been sought, a party shall have 21 days from the date of the hearing officer's order resolving the motion to correct to file a petition for review. The petition shall set forth the specific findings and conclusions of the initial decision as to which exception is taken, together with supporting reasons for each exception. Supporting reasons may be stated in summary form. Any exception to an initial decision not stated in the petition for review, or in a previously filed proposed finding made pursuant to § 201.340 may, at the discretion of the Commission, be deemed to have been waived by the petitioner. In the event a petition for review is filed, any other party to the proceeding may file a cross-petition for review within the original time allowed for seeking review or within ten days from the date that the petition for review was filed, whichever is later.

* * * * *

■ 34. Section 201.411 is amended by revising paragraph (e) as follows:

§ 201.411 Commission consideration of decisions by hearing officers.

* * * * *

(e) *Summary affirmance.* (1) At any time within 21 days after the filing of a petition for review pursuant to § 201.410(b), any party may file a motion in accordance with § 201.154 asking that the Commission summarily affirm an initial decision. Any party may file an opposition and reply to such motion in accordance with § 201.154. Pending determination of the motion for summary affirmance, the Commission, in its discretion, may delay issuance of a briefing schedule order pursuant to § 201.450.

(2) Upon consideration of the motion and any opposition or upon its own initiative, the Commission may summarily affirm an initial decision. The Commission may grant summary affirmance if it finds that no issue raised in the initial decision warrants consideration by the Commission of further oral or written argument. The Commission will decline to grant summary affirmance upon a reasonable showing that a prejudicial error was committed in the conduct of the proceeding or that the decision embodies an exercise of discretion or decision of law or policy that is important and that the Commission should review.

* * * * *

■ 35. Section 201.420 is amended by:

■ a. Revising paragraph (b);

■ b. Redesignating paragraphs (c) and (d) as paragraphs (d) and (e); and

■ c. Adding new paragraph (c).

The revision and addition read as follows:

§ 201.420 Appeal of determinations by self-regulatory organizations.

* * * * *

(b) *Procedure.* As required by section 19(d)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(d)(1), an applicant must file an application for review with the Commission within 30 days after the notice of the determination is filed with the Commission and received by the aggrieved person applying for review. The Commission will not extend this 30-day period, absent a showing of extraordinary circumstances. This section is the exclusive remedy for seeking an extension of the 30-day period.

(c) *Application.* The application shall be filed with the Commission pursuant to § 201.151. The applicant shall serve the application on the self-regulatory organization. The application shall identify the determination complained of and set forth in summary form a brief statement of the alleged errors in the determination and supporting reasons therefor. The application shall state an address where the applicant can be served. The application should not exceed two pages in length. If the applicant will be represented by a representative, the application shall be accompanied by the notice of appearance required by § 201.102(d).

* * * * *

■ 36. Section 201.430 is amended by revising paragraph (a) to read as follows:

§ 201.430 Appeal of actions made pursuant to delegated authority.

(a) *Scope of rule.* Any person aggrieved by an action made by authority delegated in §§ 200.30–1 through 200.30–8 or §§ 200.30–11 through 200.30–18 of this chapter may seek review of the action pursuant to paragraph (b) of this section.

* * * * *

■ 37. Sections 201.440 and 201.441 are added to read as follows:

§ 201.440 Appeal of determinations by the Public Company Accounting Oversight Board.

(a) *Application for review; when available.* Any person who is aggrieved by a determination of the Board with respect to any final disciplinary sanction, including disapproval of a completed application for registration of a public accounting firm, may file an application for review.

(b) *Procedure.* An aggrieved person may file an application for review with the Commission pursuant to § 201.151 within 30 days after the notice filed by the Board of its determination with the Commission pursuant to § 240.19d–4 of this chapter is received by the aggrieved person applying for review. The applicant shall serve the application on the Board at the same time. The application shall identify the determination complained of, set forth in summary form a brief statement of alleged errors in the determination and supporting reasons therefor, and state an address where the applicant can be served. The notice of appearance required by § 201.102(d) shall accompany the application.

(c) *Stay of determination.* Filing an application for review with the Commission pursuant to paragraph (b) of this section operates as a stay of the Board's determination unless the Commission otherwise orders either pursuant to a motion filed in accordance with § 201.401(e) or upon its own motion.

(d) *Certification of the record; service of the index.* Within fourteen days after receipt of an application for review, the Board shall certify and file with the Commission one copy of the record upon which it took the complained-of action. The Board shall file with the Commission three copies of an index of such record, and shall serve one copy of the index on each party.

§ 201.441 Commission consideration of Board determinations.

(a) *Commission review other than pursuant to an application for review.* The Commission may, on its own initiative, order review of any final disciplinary sanction, including disapproval of a completed application for registration of a public accounting firm, imposed by the Board that could be subject to an application for review pursuant to § 201.440(a) within 40 days after the Board filed notice thereof pursuant to § 240.19d-4 of this chapter.

(b) *Supplemental briefing.* The Commission may at any time prior to the issuance of its decision raise or consider any matter that it deems material, whether or not raised by the parties. The Commission will give notice to the parties and an opportunity for supplemental briefing with respect to issues not briefed by the parties where the Commission believes that such briefing could significantly aid the decisional process.

■ 38. Section 201.450 is amended by:

■ a. Redesignating paragraphs (a)(2)(iii) and (a)(2)(iv) as paragraphs (a)(2)(iv) and (a)(2)(v);

■ b. Adding new paragraph (a)(2)(iii);

■ c. Revising paragraph (c); and

■ d. Adding paragraph (d).

The additions and revision read as follows:

§ 201.450 Briefs filed with the Commission.

(a) * * *

(2) * * *

(iii) Receipt by the Commission of an index to the record of a determination by the Board filed pursuant to § 201.440(d);

* * * * *

(c) *Length limitation.* Except with leave of the Commission, opening and opposition briefs shall not exceed 14,000 words and reply briefs shall not exceed 7,000 words, exclusive of pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions or rules, and exhibits. The number of words shall include pleadings incorporated by reference. Motions to file briefs in excess of these limitations are disfavored.

(d) *Certificate of compliance.* An opening or opposition brief that does not exceed 30 pages in length, exclusive of pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions, or rules and exhibits, but inclusive of pleadings incorporated by reference, is presumptively considered to contain no more than 14,000 words. A reply brief that does not exceed 15 pages in length, exclusive of pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions, or rules and exhibits, but inclusive of pleadings incorporated by reference, is presumptively considered to contain no more than 7,000 words. Any brief that exceeds these page limits must include a certificate by the party's representative, or an unrepresented party, stating that the brief complies with the length limitation set forth in § 201.450(c) and stating the number of words in the brief. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the brief.

■ 39. Section 201.451 is amended by revising paragraph (b) to read as follows:

§ 201.451 Oral argument before the Commission.

* * * * *

(b) *Procedure.* Requests for oral argument shall be made by separate motion accompanying the initial brief on the merits. The Commission shall issue an order as to whether oral argument is to be heard, and if so, the time and place therefor. If oral argument is granted, the time fixed for oral argument shall be changed only by written order of the Commission, for good cause shown. The order shall state at whose request the change is made and the reasons for any such changes. No visual aids may be used at oral argument unless copies have been provided to the Commission and all parties at least five business days before the argument is to be held.

* * * * *

■ 40. Section 201.460 is amended by adding paragraph (a)(3) to read as follows:

§ 201.460 Record before the Commission.

* * * * *

(a) * * *

(3) In a proceeding for final decision before the Commission reviewing a determination of the Board, the record shall consist of:

(i) The record certified pursuant to § 201.440(d) by the Board;

(ii) Any application for review; and

(iii) Any submissions, moving papers, and briefs filed on appeal or review.

* * * * *

■ 41. Section 201.470 is amended by revising paragraph (b) to read as follows:

§ 201.470 Reconsideration.

* * * * *

(b) *Procedure.* A motion for reconsideration shall be filed within 10 days after service of the order complained of, or within such time as the Commission may prescribe upon motion for extension of time filed by the person seeking reconsideration, if the motion is made within the foregoing 10-day period. The motion for reconsideration shall briefly and specifically state the matters of record alleged to have been erroneously decided, the grounds relied upon, and the relief sought. A motion for reconsideration shall conform to the requirements, including page length, provided in § 201.154. No response to a motion for reconsideration shall be filed unless requested by the Commission. Any response so requested shall comply with § 201.154.

■ 42. Section 201.601 is amended by adding paragraph (c) to read as follows:

§ 201.601 Prompt payment of disgorgement, interest and penalties.

* * * * *

(c) *Method of making payment.* Payment shall be made by United States postal money order, wire transfer, certified check, bank cashier's check, or bank money order made payable to the Securities and Exchange Commission. The payment shall be mailed or delivered to the office designated by this Commission. Payment shall be accompanied by a letter that identifies the name and number of the case and the name of the respondent making payment. A copy of the letter and the instrument of payment shall be sent to counsel for the Division of Enforcement.

§§ 201.610 through 201.614 and 201.620 [Removed and Reserved]

■ 43. Sections 201.610 through 201.614 and § 201.620 are removed and reserved.

■ 44. Sections 201.1100 through 201.1106, Subpart F—Fair Fund and Disgorgement Plans—are added to read as follows:

Subpart F—Fair Fund and Disgorgement Plans

Sec.

201.1100 Creation of Fair Fund.
201.1101 Submission of plan of distribution; contents of plan.
201.1102 Provisions for payment.
201.1103 Notice of proposed plan and opportunity for comment by non-parties.
201.1104 Order approving, modifying, or disapproving proposed plan.
201.1105 Administration of plan.
201.1106 Right to challenge.

Authority: 15 U.S.C. 77h–1, 77s, 77u, 78c(b), 78d–1, 78d–2, 78u–2, 78u–3, 78v, 78w, 80a–9, 80a–37, 80a–39, 80a–40, 80b–3, 80b–11, 80b–12, and 7246.

§ 201.1100 Creation of Fair Fund.

In any agency process initiated by an order instituting proceedings in which the Commission issues an order requiring the payment of disgorgement by a respondent and also assessing a civil money penalty against that respondent, the Commission may order that the amount of the disgorgement and of the civil money penalty, together with any funds received by the Commission pursuant to 15 U.S.C. 7246(b), be used to create a fund for the benefit of investors who were harmed by the violation.

§ 201.1101 Submission of plan of distribution; contents of plan.

(a) *Submission.* The Commission or the hearing officer may, at any time, order any party to submit a plan for the administration and distribution of funds in a Fair Fund or disgorgement fund. Unless ordered otherwise, the Division of Enforcement shall submit a proposed plan no later than 60 days after the respondent has turned over the funds or other assets pursuant to the Commission's order imposing disgorgement and, if applicable, a civil money penalty and any appeals of the Commission's order have been waived or completed, or appeal is no longer available.

(b) *Contents of plan.* Unless otherwise ordered, a plan for the administration of a Fair Fund or a disgorgement fund shall include the following elements:

(1) Procedures for the receipt of additional funds, including the specification of any account where funds will be held, the instruments in which the funds may be invested; and, in the case of a Fair Fund, the receipt of any funds pursuant to 15 U.S.C. 7246(b), if applicable;

(2) Specification of categories of persons potentially eligible to receive proceeds from the fund;

(3) Procedures for providing notice to such persons of the existence of the fund and their potential eligibility to receive proceeds of the fund;

(4) Procedures for making and approving claims, procedures for handling disputed claims, and a cut-off date for the making of claims;

(5) A proposed date for the termination of the fund, including provision for the disposition of any funds not otherwise distributed;

(6) Procedures for the administration of the fund, including selection, compensation, and, as necessary, indemnification of a fund administrator to oversee the fund, process claims, prepare accountings, file tax returns, and, subject to the approval of the Commission, make distributions from the fund to investors who were harmed by the violation; and

(7) Such other provisions as the Commission or the hearing officer may require.

§ 201.1102 Provisions for payment.

(a) *Payment to registry of the court or court-appointed receiver.* Subject to such conditions as the Commission or the hearing officer shall deem appropriate, a plan for the administration of a Fair Fund or a disgorgement fund may provide for payment of funds into a court registry or to a court-appointed receiver in any case pending in federal or state court against a respondent or any other person based upon a complaint alleging violations arising from the same or substantially similar facts as those alleged in the Commission's order instituting proceedings.

(b) *Payment to the United States Treasury under certain circumstances.* When, in the opinion of the Commission or the hearing officer, the cost of administering a plan of disgorgement relative to the value of the available disgorgement funds and the number of potential claimants would not justify distribution of the disgorgement funds to injured investors, the plan may provide that the disgorgement funds and any civil penalty shall be paid directly to the general fund of the United States Treasury.

§ 201.1103 Notice of proposed plan and opportunity for comment by non-parties.

Notice of a proposed plan of disgorgement or a proposed Fair Fund plan shall be published in the *SEC Docket*, on the SEC website, and in such other publications as the Commission or the hearing officer may require. The notice shall specify how copies of the proposed plan may be obtained and shall state that persons desiring to comment on the proposed plan may submit their views, in writing, to the Commission.

§ 201.1104 Order approving, modifying, or disapproving proposed plan.

At any time after 30 days following publication of notice of a proposed plan of disgorgement or of a proposed Fair Fund plan, the Commission shall, by order, approve, approve with modifications, or disapprove the proposed plan. In the discretion of the Commission, a proposed plan that is substantially modified prior to adoption may be republished for an additional comment period pursuant to § 201.1103. The order approving or disapproving the plan should be entered within 30 days after the end of the final period allowed for comments on the proposed plan unless the Commission or the hearing officer, by written order, allows a longer period for good cause shown.

§ 201.1105 Administration of plan.

(a) *Appointment and removal of administrator.* The Commission or the hearing officer shall have discretion to appoint any person, including a Commission employee, as administrator of a plan of disgorgement or a Fair Fund plan and to delegate to that person responsibility for administering the plan. An administrator may be removed at any time by order of the Commission or hearing officer.

(b) *Assistance by respondent.* A respondent may be required or permitted to administer or assist in administering a plan of disgorgement subject to such terms and conditions as the Commission or the hearing officer deems appropriate to ensure the proper distribution of the funds.

(c) *Administrator to post bond.* If the administrator is not a Commission employee, the administrator shall be required to obtain a bond in the manner prescribed in 11 U.S.C. 322, in an amount to be approved by the Commission. The cost of the bond may be paid for as a cost of administration. The Commission may waive posting of a bond for good cause shown.

(d) *Administrator's fees.* If the administrator is a Commission employee, no fee shall be paid to the administrator for his or her services. If the administrator is not a Commission employee, the administrator may file an application for fees for completed services, and upon approval by the Commission or a hearing officer, may be paid a reasonable fee for those services. Any objections thereto shall be filed within 21 days of service of the application on the parties.

(e) *Source of funds.* Unless otherwise ordered, fees and other expenses of administering the plan shall be paid first from the interest earned on the funds, and if the interest is not sufficient, then from the corpus.

(f) *Accountings.* During the first 10 days of each calendar quarter, or as otherwise directed by the Commission or the hearing officer, the administrator shall file an accounting of all monies earned or received and all monies spent in connection with the administration of the plan of disgorgement. A final accounting shall be submitted for approval of the Commission or hearing officer prior to discharge of the administrator and cancellation of the administrator's bond, if any.

(g) *Amendment.* A plan may be amended upon motion by any party or by the plan administrator or upon the Commission's or the hearing officer's own motion.

§ 201.1106 Right to challenge.

Other than in connection with the opportunity to submit comments as provided in § 201.1103, no person shall be granted leave to intervene or to participate or otherwise to appear in any agency proceeding or otherwise to challenge an order of disgorgement or creation of a Fair Fund; or an order approving, approving with modifications, or disapproving a plan of disgorgement or a Fair Fund plan; or any determination relating to a plan based solely upon that person's eligibility or potential eligibility to participate in a fund or based upon any private right of action such person may have against any person who is also a respondent in the proceeding.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 45. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 46. Section 240.19d–4 is added to read as follows:

§ 240.19d–4 Notice by the Public Company Accounting Oversight Board of disapproval of registration or of disciplinary action.

(a) *Definitions*—(1) *Board* means the Public Company Accounting Oversight Board.

(2) *Public accounting firm* shall have the meaning set forth in 15 U.S.C. 7201(a)(11).

(3) *Registered public accounting firm* shall have the meaning set forth in 15 U.S.C. 7201(a)(12).

(4) *Associated person* shall mean a person associated with a registered public accounting firm as defined in 15 U.S.C. 7201(a)(9).

(b)(1) *Notice of disapproval of registration.* If the Board disapproves a completed application for registration by a public accounting firm, the Board shall file a notice of its disapproval with the Commission within 30 days and serve a copy on the public accounting firm.

(2) *Contents of the notice.* The notice required by paragraph (b)(1) of this section shall provide the following information:

(i) The name of the public accounting firm and the public accounting firm's last known address as reflected in the Board's records;

(ii) The basis for the Board's disapproval, and a copy of the Board's written notice of disapproval; and

(iii) Such other information as the Board may deem relevant.

(c)(1) *Notice of disciplinary action.* If the Board imposes any final disciplinary sanction on any registered public accounting firm or any associated person of a registered public accounting firm under 15 U.S.C. 7215(b)(3) or 7215(c), the Board shall file a notice of the disciplinary sanction with the Commission within 30 days and serve a copy on the person sanctioned.

(2) *Contents of the notice.* The notice required by paragraph (c)(1) of this section shall provide the following information:

(i) The name of the registered public accounting firm or the associated person, together with the firm's or the person's last known address as reflected in the Board's records;

(ii) A description of the acts or practices, or omissions to act, upon which the sanction is based;

(iii) A statement of the sanction imposed, the reasons therefor, or a copy of the Board's statement justifying the sanction, and the effective date of such sanction; and

(iv) Such other information as the Board may deem relevant.

Dated: March 12, 2004.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–6069 Filed 3–18–04; 8:45 am]

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Federal Register

Friday,
March 19, 2004

Part IV

Department of the Treasury

Fiscal Service

31 CFR Part 210

Federal Government Participation in the Automated Clearing House; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510–AA93

Federal Government Participation in the Automated Clearing House

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: We are amending our regulation at 31 CFR Part 210 (Part 210), which governs the use of the Automated Clearing House (ACH) system by Federal agencies (agencies). The ACH network is a nationwide electronic funds transfer (EFT) system that provides for the inter-bank clearing of credit and debit transactions and for the exchange of information among participating financial institutions. Part 210 adopts, with some exceptions, the ACH rules (ACH Rules) developed by NACHA—The Electronic Payments Association (NACHA) as the rules governing the use of the ACH system by agencies.

This document includes changes to Subpart A and Subpart B, as well as Appendix C, of Part 210. We are amending Subpart A to clarify and shorten the notification statement contained in Appendix C, which is required for converting checks to ACH payments, and to expand the circumstances in which agencies may accept checks for conversion to ACH payments. We are amending Subpart B of the rule to address certain issues relating to the reclamation of Federal benefit payments and the receipt of misdirected Federal payments.

DATES: This rule is effective April 19, 2004.

ADDRESSES: You can download this rule at the following World Wide Web address: *http://www.fms.treas.gov/ach.*

FOR FURTHER INFORMATION CONTACT: Donald Clark, Senior Financial Program Specialist, at (202) 874–7092 or *don.clark@fms.treas.gov*; or Natalie H. Diana, Senior Counsel, at (202) 874–6680 or *natalie.diana@fms.treas.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

We published a notice of proposed rulemaking (NPRM) to amend Part 210 on August 21, 2003. *See* 68 FR 50672. This proposed rule addressed the circumstances in which checks presented or delivered to agencies may be converted to ACH debit entries and issues relating to the reclamation of Federal benefit payments and the receipt of misdirected payments. We requested comment on the NPRM. We received comments from 5 credit unions, 11 banks, 5 government agencies, 19 trade and professional groups, and two individual citizens. Several of the proposed amendments to Part 210 were generally supported by commenters, and we are adopting those proposals without substantive change.

A number of commenters, however, strongly opposed certain proposed amendments to allow for the wider use of check conversion by agencies. In light of these comments and the enactment in October 2003 of the Check Clearing for the 21st Century Act (Check 21), we have modified or eliminated certain proposed changes to Part 210 relating to check conversion, as discussed in Section II below.

We plan to use check conversion for consumer checks that we receive over-the-counter and at lockboxes to the extent that appropriate notice can be provided. We will not convert consumer checks submitted to a lockbox where notice is not feasible. Instead, we will wait until Check 21 becomes effective and initially use either a substitute check or, where possible, an electronic image for presentment. Eventually, we hope to clear all of these items by image exchange.

We are currently converting a nominal number of business checks to ACH at some operational locations, but we will not expand these operational locations to convert more business checks. We will not convert business checks at new operational locations received over-the-counter or at our lockboxes. Instead, we will wait until Check 21 becomes effective and initially use either a substitute check or an electronic image, where possible, for presentment. Eventually we would want to have all of these items cleared by image exchange.

We do not plan to convert other types of payment instruments such as money orders, traveler's checks, certified bank checks and credit card checks. We will wait until Check 21 becomes effective and those items then will be cleared either using a substitute check or an electronic image, where possible.

We have decided not to allow agencies to originate an ACH debit entry to collect a service fee related to a Re-presented Check (RCK) entry for which the agency has not obtained explicit authorization. Agencies will be able to originate a debit to collect such a fee if they have obtained express authorization.

II. Summary

A. Check Conversion

In this final rule, we are shortening the disclosure statement that agencies must provide before converting checks that they receive at lockboxes, and we are expanding the circumstances in which agencies may accept checks for conversion to ACH debit entries. We are not adopting the proposal to broaden the definition of ''business check'' to include additional instruments such as money orders, traveler's checks, certified bank checks and credit card checks. We also are not adopting, for reasons discussed below, the proposal to allow agencies to originate an ACH debit entry to collect a service fee related to an RCK entry where the agency has provided prior notice of the fee, but has not obtained the Receiver's express authorization.

In the NPRM, we proposed to amend Part 210 to allow agencies to convert to ACH debit entries certain types of payment instruments that are commonly received at lockboxes and points-of-purchase, including money orders, traveler's checks, certified bank checks and credit card checks. The proposal was to broaden the definition of business checks to include these additional payment instruments, thereby allowing agencies to convert these items to ACH debit entries. We received 33 comments on this proposed change. Five commenters agreed with the proposal and 28 commenters disagreed with the proposal. Those agreeing with the proposed change noted the efficiencies to be gained. Commenters who opposed the change expressed a variety of concerns. A number of financial institutions commented that the proposal would hinder their ability to detect fraudulent items; interfere with check processing capabilities inherent to the paper check (*e.g.*, stop payments, account reconciliation services, controlled disbursement, and services such as positive pay and payee verification); and create a greater number of exception items, all of which would result in significant costs to the financial services industry. Some commenters suggested that these costs could exceed $100 million, and that the proposal thus constituted a ''significant regulatory action'' for purposes of Executive Order 12866.

Issuers of money orders indicated that, to establish that a money order has been altered (*e.g.*, amount increased, endorsement forged, or payee name forged) it is often necessary to view the original money order. Some issuers of money orders commented that the

proposed change would undermine their anti-money laundering compliance programs under the Bank Secrecy Act. Other commenters noted that the presenter of a cashier's check, official check, money order or traveler's check is not the owner of the account on which the instrument is drawn, and thus cannot properly authorize the instrument's conversion to an ACH debit. One commenter noted that for credit card checks and some other instruments, the account contained in the Magnetic Ink Character Recognition (MICR) line is not an account that is reachable through the ACH processes at the Receiving Depository Financial Institution (RDFI), meaning that, in every case, the ACH entry will be returned.

We have considered all of these comments and also the passage of Check 21, which will become effective on October 28, 2004, in deciding not to proceed with the proposal to convert additional instruments. At the time the NPRM was published, Check 21 had not yet been enacted. The Financial Management Service (FMS) believes that Check 21 presents an alternative to check conversion that may make possible many of the same benefits and efficiencies of check conversion without raising the issues identified by commenters. Accordingly, as we continue our efforts to move to an all-electronic environment for the processing of payments and collections, we will be evaluating the use of check conversion, substitute checks and, ultimately, electronic image presentment, for all items that are received.

In the NPRM, we proposed to allow agencies to originate an ACH debit entry in order to collect a service fee related to an RCK entry, if notice of the fee is given to the Receiver before the agency accepts the Receiver's check. We received 7 comments agreeing, and 14 comments disagreeing with this proposal. All credit unions that commented agreed with this proposal. Two banks agreed with this proposal, while five disagreed. All professional and trade organizations opposed the proposal. The opposing commenters noted that NACHA had considered a ''notice equals authorization'' approach and had determined that this approach raised significant issues. Accordingly, the ACH Rules require explicit authorization to collect a service fee related to an RCK entry. Commenters also pointed out that the NPRM, if adopted, would create another discrepancy from ACH Rules. Some commenters stated that state attorneys general are responding to consumer complaints regarding check conversions and that the proposal would likely generate additional consumer complaints. After considering the merits of these comments, we have decided not to proceed with this proposal.

Revised Accounts Receivable Disclosure

We are amending Part 210 to shorten the disclosure that agencies must provide for accounts receivable check conversion because the existing disclosure is too lengthy to be included on many invoices and remittance documents. We received 17 comments on this proposal. Eight commenters agreed with the proposal and 9 commenters disagreed with the proposal. Those who disagreed voiced concern that the public is not yet knowledgeable and comfortable with the check conversion process. They suggested that more explanation is better than less. One commenter that supported the change stated that the ''proposed language seems to address in plain language what [check conversion] would do with the customer's check.'' We agree that more work is required to educate the public regarding check conversion. To that end, FMS has joined NACHA's Check Conversion Education Coalition, which is working to advance public education. However, we also believe that the disclosure need not be lengthy to be clear. To the contrary, as one commenter noted: ''The current disclosure is too long and the consumer is probably not reading it.'' We are adopting this proposal without substantive change.

Expanded Accounts Receivable Check Conversion Applications

We are amending Part 210 to allow agencies to convert checks using accounts receivable check conversion rules in certain circumstances that fall outside typical accounts receivable and point-of-purchase settings. Our proposal addressed situations in which agencies accept checks in unusual circumstances, such as when Army pay officers travel to remote, off-base locations in order to cash checks for soldiers. In those situations, pay officers cannot bring along the necessary equipment to scan and convert checks. Thus, pay officers cannot convert these checks using point-of-purchase check conversion. However, neither does the acceptance of checks in these circumstances constitute an accounts receivable (lockbox) setting, meaning that these checks cannot be converted using accounts receivable check conversion either. Similarly, National Park Service rangers collect park entrance fees at park entrances where check conversion equipment cannot always be used because there is not adequate enclosed and protected space, or proper connectivity. In some other situations, agency employees accept checks but do not have authority to process those checks. For example, U.S. Customs agents may be required to accept check payments incident to their inspection duties, but in some cases these agents don't have authority to process the payments. In all of these circumstances, checks are received in situations that don't fall within the conventional meaning of a lockbox or an accounts receivable setting, but it is not possible to scan and return the voided check, as required in the rules governing point-of-purchase (POP) entries. We therefore proposed to amend Part 210 to permit the conversion of checks presented in these kinds of circumstances using the rules governing accounts receivable check conversion.

We received 19 comments on this proposal. Four commenters expressed full support for the proposal, 3 commenters either conditionally supported or partially opposed the proposal, and 12 commenters opposed the proposal. The primary concern of the commenters who opposed or expressed reservations regarding the proposal was that the expansion of circumstances in which checks may be converted could result in the conversion of additional business checks to ACH entries. Commenters noted that agencies convert business checks using the Cash Concentration or Disbursement (CCD) Standard Entry Class, and voiced concern that check conversion using this format would confuse Receivers and RDFIs. Commenters expressed concern over the conversion of additional business checks to ACH debits and described the difficulty RDFIs experience in distinguishing these entries from other CCD debit entries. They commented that converted business checks require unique processing by these RDFIs. Some commenters also noted their concern that this proposal represented another deviation from the ACH Rules.

The great majority of checks received in the situations we are seeking to address are consumer checks, in which case the checks will be converted using the ARC standard entry class code. We do not plan to begin converting new collection flows with business checks. When Check 21 becomes effective, we will consider using either a substitute check or an electronic image to process these items.

B. Reclamations; Misdirected Payments

We are amending several of the reclamation provisions of Part 210, as

discussed below. We are not proceeding with the proposal to amend Part 210 to provide an exception to the general rule that an RDFI is liable to the Federal government for all post-death benefit payments unless the RDFI has the right to limit its liability. This proposal was intended to recognize that in a small number of situations, an agency may properly issue a payment after the death of the recipient and may not wish to reclaim that payment. The proposal would have allowed agencies to choose not to attempt to recover certain post-death payments to which the recipient is entitled, and to relieve RDFIs of liability for those payments. Six commenters agreed with the proposal and four commenters disagreed with the proposal. A concern noted by commenters was that financial institutions should not be required to determine eligibility for Federal payments.

The proposal would not have allowed, or required, financial institutions to determine a recipient's eligibility for a Federal payment. However, it is clear from the comments that this proposal created significant confusion for RDFIs with respect to their role in determining to which post-death payments a deceased recipient is entitled. In light of the small number of situations in which agencies do not seek to reclaim post-death benefit payments, we have decided not to proceed with this proposed amendment.

We have also determined not to proceed with the proposed amendment to Part 210 that would have required RDFIs to notify an account owner of receipt of a notice of reclamation ''promptly'' rather than ''immediately.'' We received seven comments on this proposal. Three credit unions and two banks agreed with the proposal, but observed that most financial institutions already notify account holders as soon as possible. Two government agencies were critical of the proposed change. One commenter felt that the term ''promptly'' is too vague and that a specific deadline should be provided.

Although the intent of the proposal was to reduce unnecessary burden on financial institutions, a review of the comments suggests this change could be a source of confusion and debate among agencies and financial institutions as to what period of time constitutes prompt notification. Accordingly, we have decided not to adopt this change.

Use of R15 or R14 Return Reason Code

We are amending Part 210 to provide that an RDFI that returns a payment using return reason code R15 (Beneficiary or Account Holder Deceased) or R14 (Representative Payee Deceased) is deemed to have satisfied the requirement to notify an agency of the death of a payment recipient if the RDFI learns of the death from a source other than notice from the agency. However, we are not proceeding with the proposal to require financial institutions that learn that an account holder has died to return any subsequent Federal benefit payments using an R15 or R14 code.

Under Part 210, a financial institution that learns of the death of a recipient from a source other than the agency is required to notify the agency of the death. Also, a financial institution is required to return any Federal benefit payment received after the institution learns of the death of the recipient. *See* 31 CFR 210.10(a). However, Part 210 currently does not specify what ACH return reason code financial institutions must use in effecting these returns. In some cases, financial institutions use an R02 (Account Closed), or other non-death code, whereas in other cases financial institutions use an R15 or R14 code. Most agencies that receive payments returned with an R15 code automatically stop payments to the recipient and begin an investigation. In contrast, when a payment is returned using an R02 or other non-death code, agencies may only temporarily suspend the payment rather than terminating further payments to the recipient. Thus, the use of the R02 or other non-death code to return a payment made to a deceased recipient may result in further payments being issued to the deceased beneficiary, creating a risk of loss of additional public funds. To reduce the potential for such losses, we proposed to require financial institutions to use an R15 or R14 code when they return post-death payments.

We received 9 comments on this proposal that supported the proposal and 10 comments that opposed the proposal. Those opposing the proposal stated that many financial institutions have systems in place to automatically generate an R02 code when an account has been closed for any reason, whether due to the account holder's death or for another reason. Therefore, complying with this proposal would require substantial systems changes at great cost.

Rather than finalize the amendment as proposed, we are amending Part 210 to provide that the use of an R15 or R14 code will satisfy the financial institution's obligation to notify the agency. A financial institution may use a code other than R15 or R14 to effect these returns, but in that case the financial institution will still have the obligation to separately notify the agency of the recipient's death. FMS will revise the *Guide to Federal Government ACH Payments and Collections* (Green Book) to encourage financial institutions to use return Reason Code R15 or R14 if the financial institution learns of the death from a source other than the agency. By using one of these codes, the financial institution will satisfy both the requirement to return post-death payments and the requirement to notify the agency of the death of the recipient.

Misdirected Federal Payments

We are amending Part 210 to provide that if an RDFI becomes aware that an agency has directed a payment to the wrong account, the RDFI shall notify the agency, and that the origination of a Notification of Change (NOC) entry or the return of the funds with an appropriate return reason code constitutes such notice.

On rare occasions, a Federal payment is directed to an account that does not belong to the entitled payee because, for example, the payee mistakenly provided an incorrect account and/or routing number to the paying agency. FMS recognizes that RDFIs may rely on the account number alone in posting a payment, and that RDFIs have no obligation to verify that the payee name matches the name of the account holder on the RDFI's records. However, in some cases, the owner of an account to which a Federal payment was erroneously delivered has brought the error to the attention of the RDFI. The RDFI, rather than notifying the agency, has removed the funds from the account to which they were credited and credited the funds to the account of the intended payee, based on the payee name and/or the individual identification number in the ACH information accompanying the payment. When an RDFI decides to transfer a Federal payment to an account other than the account indicated in the ACH payment information, it does so at its own risk and may be liable to the issuing agency if the RDFI's judgment regarding the intended payee is incorrect and there is a resulting loss to the agency. Moreover, when this approach is taken, and the RDFI does not in some way notify the agency that originated the payments, the agency will remain unaware of any problem and may continue to direct subsequent payments to the wrong account.

We received five comments in support of the proposal, three comments that conditionally supported the proposal and seven comments that disagreed with the proposal.

Commenters did not disagree with the importance of notifying the agency when an RDFI recredits a payment to an account number other than that contained in the ACH entry. However, several commenters indicated that it would be burdensome to have to make telephone calls or use some other non-automated way to contact the agency. These commenters expressed a preference, instead, for using the NOC process as a means of providing notice.

In light of these comments, we are amending the regulation to provide that, where appropriate, the use of an NOC entry will constitute notice to the agency. We recognize that the normal time limit for originating NOC entries is two banking days and that the financial institution is likely to learn of the misdirected payment after this deadline has passed. However, agencies do not return NOCs that they receive after the two-day cutoff, and an NOC initiated after the two-day cutoff will constitute proper notice to the agency. Alternatively, as another commenter suggested, the RDFI may return the payment to the agency with an appropriate return reason code, rather than deposit it to another account that the RDFI believes to be correct. These are not the only means of notice that an RDFI may use, but they are in all cases a sufficient means of notice.

Six Year Limit on Reclamations

We are amending Part 210 to prohibit agencies from reclaiming payments that were made more than six years prior to the date of the notice of reclamation. The only exception to this limitation would be in a situation in which the account balance exceeds the total amount of the payments that the agency would otherwise be permitted to reclaim after applying the six-year limitation.

Part 210 currently prohibits (subject to one exception) an agency from reclaiming any post-death or post-incapacity payment made more than six years prior to the most recent payment made by the agency to the recipient's account. There have been situations in which the most recent payment that an agency made to a recipient's account took place several years before the reclamation was initiated. Thus, notwithstanding the existing limitation, there have been reclamations initiated by agencies for payments made many years ago. These reclamations are difficult and time-consuming to process because neither agencies nor financial institutions retain records indefinitely, meaning that very old payment records and related account information frequently are not available.

In the NPRM, we proposed to prohibit agencies from reclaiming payments that were made more than seven years prior to the date of the notice of reclamation. We received three comments in favor of the proposed change—two from banks and one from an agency. One credit union agreed with the change, with the condition that FMS should work with NACHA to lengthen their record retention period to coincide with the FMS proposal. Nine commenters, including five banks and four payment associations, opposed to the change. Commenters supported the proposal that the lookback period begin from the date of the notice of reclamation and not the date on which the last payment was issued. However, commenters who disagreed with the proposal uniformly commented that it would not be consistent with the ACH Rule, in that the period that banks are required to retain documentation under the ACH Rules is limited to six years. On the basis of these comments, we have determined that agencies will be limited to reclaiming payments made up to six years prior to the date of the notice of reclamation, rather than seven years.

Right to Financial Privacy Act Changes

We are amending Part 210 to limit the information that agencies may request from financial institutions, in accordance with the Right to Financial Privacy Act. Part 210 currently provides that in order to limit its liability in a reclamation, a financial institution must respond to a notice of reclamation by providing the names, addresses, and ''any other relevant information'' regarding account co-owners and other persons who withdrew, or were authorized to withdraw, funds from the recipient's account after the death or legal incapacity of the recipient. 31 CFR 210.11(b)(3)(i). This information is used by paying agencies to pursue the recovery of the payments from persons who have made use of the funds but who were not entitled to them.

The information that an agency may obtain from a financial institution in connection with a reclamation is limited by the Right to Financial Privacy Act, 12 U.S.C. 3401 *et seq.* (Financial Privacy Act). The Financial Privacy Act prohibits, subject to some exceptions, agencies from obtaining from financial institutions any information contained in or derived from the financial records of any customer, except pursuant to an administrative or judicial subpoena, a search warrant, or other method prescribed by the Act. The Financial Privacy Act contains two exceptions that permit agencies to obtain from a financial institution certain information related to an account to which an erroneous Social Security Federal Old-Age, Survivors, and Disability Insurance (SSA) benefit payment, or a benefit payment made by the Railroad Retirement Board or Department of Veterans' Affairs (VA), was sent without following the Act's procedural requirements. The exceptions permit disclosure by a financial institution of the name and address of any customer ''where the disclosure of such information is necessary to, and such information is used solely for the purpose[s] of, the proper administration of'' title II of the Social Security Act (42 U.S.C. 401 *et seq.*), the Railroad Retirement Act (45 U.S.C. 231 *et seq.*) or benefits programs under laws administered by VA. 12 U.S.C. 3413(k), (p). These exceptions permit disclosure only of names and addresses—not of other transaction information, such as dates and times of withdrawals.

In order to clarify that the information that financial institutions are required to provide in connection with a reclamation is limited to the information specified in the Financial Privacy Act, we proposed in the NPRM to revise the wording of subsection 210.11(b)(3)(i). Treasury received five comments agreeing with this proposal and none that opposed it. We are proceeding with the amendment as proposed.

III. Section-by-Section Analysis

Section 210.6(h)

We are revising § 210.6(h) in order to provide that agencies may originate ACH debit entries using checks that are (1) received via the mail; (2) received at a dropbox; and (3) delivered in person in circumstances in which it is impossible or impractical for the agency to image and return the check at the time the check is delivered. In all cases, the disclosure set forth at Appendix C must be provided to the Receiver before the check is delivered. In situations in which the check is being delivered in person, the disclosures must be posted or handed to the Receiver.

Section 210.8(d)

We are adding a new subsection to § 210.8 in order to provide that an RDFI shall promptly notify an agency if the RDFI becomes aware that the agency has originated an ACH credit entry to an account that is not owned by the payee whose name appears in the ACH payment information. ''Promptly'' will normally mean no later than two business days after the error has come to the RDFI's attention. Although § 210.8(d) does not dictate the means of

notice, it does provide that notification may be accomplished by either originating a NOC entry through the ACH, or by returning the payment to the agency with the appropriate reason code. An RDFI that fails to provide the notice may be liable to the Federal government for loss resulting from its failure to notify the paying agency pursuant to the general liability provision of § 210.11(d).

This subsection does not impose any duty on RDFIs to verify the account numbers on incoming payments against the receiver names.

Section 210.10

We are adding a sentence to § 210.10(a) stating that the use of an R15 or R14 code will satisfy the RDFI's obligation to notify the agency after learning of the death of a recipient or beneficiary from a source other than notice from the agency. This is not the only means that an RDFI may use to provide the required notice, but it is in all cases a sufficient form of notice.

We are revising § 210.10(d) in order to amend the limitation on the age of payments that an agency may reclaim. Revised § 210.10(d) prohibits agencies from reclaiming any payment that was made more than six years prior to the date of the notice of reclamation. The only exception to this limitation is in a situation in which the account balance exceeds the total amount of the payments that the agency would otherwise be permitted to reclaim.

In addition, we are revising the wording of the first sentence of § 210.10(d) to provide that the 120-day period for initiating a reclamation begins when an agency receives ''actual or constructive knowledge'' of the death or legal incapacity. This is the standard to which financial institutions are subject as a condition of limiting their liability for a reclamation under § 210.11. Also, the second sentence of § 210.10(d) has been reworded in order to make it more clear that a notice of reclamation applies only to the type of payments which are the subject of the notice, and does not preclude reclamation actions by other agencies that may have issued payments to the recipient or by the same agency with respect to a different type of payment issued to the recipient. For example, the Social Security Administration issues two different types of benefit payments: SSA payments and Supplemental Security Income (SSI) payments. Some recipients receive both of these types of benefit payments. A notice of reclamation regarding SSA payments is separate from, and does not affect the potential liability of a financial institution under, a notice of reclamation for SSI payments issued to the same recipient.

Section 210.11

We are revising § 210.11 to limit the information that an RDFI is required to provide in order to limit its liability in a reclamation. First, the information regarding withdrawers and co-owners is limited to the name and address of these individuals. Second, the information is to be provided only in cases involving the reclamation of SSA benefit payments, or benefit payments certified by the Railroad Retirement Board or Department of Veterans' Affairs.

Section 210.14

We are correcting an error in § 210.14 by changing the word ''direct'' to ''directed.''

Appendix C

We are amending Appendix C to the regulation by shortening the disclosure that agencies must provide in connection with ACH debit entries they originate pursuant to § 210.6(h).

IV. Procedural Requirements

Request for Comment on Plain Language

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how to make the rule clearer. For example, you may wish to discuss: (1) Whether we have organized the material to suit your needs; (2) whether the requirements of the rules are clear; or (3) whether there is something else we could do to make these rules easier to understand.

Executive Order 12866

The rule does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act

It is hereby certified that the rule will not have a significant economic impact on a substantial number of small entities. The changes to the regulation related to check conversion will not result in significant costs for individuals or financial institutions affected by the changes, including financial institutions that are small entities. The changes to the regulation related to reclamations will generally reduce costs for financial institutions affected by the changes. The changes to the regulation related to notice of misdirected payments will involve minimal costs to financial institutions, particularly since an automated means of notice may be used, and therefore will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. We have determined that the rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

Executive Order 13132—Federalism Summary Impact Statement

Executive Order 13132 requires agencies, including the Service, to certify their compliance with that Order when they transmit to the Office of Management and Budget (OMB) any draft final regulation that has federalism implications. Under the Order, a regulation has federalism implications if it has ''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.'' In the case of a regulation that has federalism implications and that preempts State law, the Order imposes certain specific requirements that the agency must satisfy, to the extent practicable and permitted by law, prior to the formal promulgation of the regulation.

In general, the Executive Order requires the agency to adhere strictly to Federal constitutional principles in developing rules that have federalism implications; provides guidance about an agency's interpretation of statutes that authorize regulations that preempt State law; and requires consultation with State officials before the agency issues a final rule that has federalism implications or that preempts State law.

The 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.

List of Subjects in 31 CFR Part 210

Automated ClearingHouse, Electronic funds transfer, Financial Institutions, Fraud, Incorporation by reference.

Authority and Issuance

■ For the reasons set forth in the preamble, we are amending part 210 of title 31 of the Code of Federal Regulations as follows:

PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARINGHOUSE

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335, and 3720.

■ 2. Revise § 210.6(h) to read as follows:

§ 210.6 Agencies.

* * * * *

(h) *Accounts receivable check conversion.* (1) *Conversion of consumer checks.*—An agency may originate an Accounts Receivable (ARC) entry using a check drawn on a consumer account that is received via the mail or at a dropbox, or that is delivered in person in circumstances in which the agency cannot contemporaneously image and return the check. The notice and authorization requirements of ACH Rules 2.1.4 and 3.6.1 shall be met for an ARC entry only if an agency has provided the Receiver with the disclosure set forth at appendix C to this part.

(2) Conversion of business checks. An agency may originate an ACH debit using a business check that is received via the mail or at a dropbox, or that is delivered in person in circumstances in which the agency cannot contemporaneously image and return the check. The agency shall use the CCD SEC code for such entries, which shall be deemed to meet the requirements of ACH Rule 2.1.2 if the agency has provided the disclosure set forth at appendix C to this part. For purposes of ACH Rules 3.10 and 4.1.1, authorization shall consist of a copy of the notice and a copy of the Receiver's source document.

* * * * *

■ 3. Add a new paragraph (d) to § 210.8 to read as follows:

§ 210.8 Financial institutions.

* * * * *

(d) *Notice of misdirected payment.* If an RDFI becomes aware that an agency has originated an ACH credit entry to an account that is not owned by the payee whose name appears in the ACH payment information, the RDFI shall promptly notify the agency. An RDFI that originates a Notification of Change (NOC) entry with the correct account and/or Routing and Transit Number information, or returns the original ACH credit entry to the agency with an appropriate return reason code, shall be deemed to have satisfied this requirement.

■ 4. Amend § 210.10 by revising paragraphs (a) and (d) to read as follows:

§ 210.10 RDFI liability.

(a) *Full liability.* An RDFI shall be liable to the Federal Government for the total amount of all benefit payments received after the death or legal incapacity of a recipient or the death of a beneficiary unless the RDFI has the right to limit its liability under § 210.11 of this part. An RDFI shall return any benefit payments received after the RDFI becomes aware of the death or legal incapacity of a recipient or the death of a beneficiary, regardless of the manner in which the RDFI discovers such information. If the RDFI learns of the death or legal incapacity of a recipient or death of a beneficiary from a source other than notice from the agency issuing payments to the recipient, the RDFI shall immediately notify the agency of the death or incapacity. The proper use of the R15 or R14 return reason code shall be deemed to constitute such notice.

* * * * *

(d) *Time limits.* An agency that initiates a request for a reclamation must do so within 120 calendar days after the date that the agency first has actual or constructive knowledge of the death or legal incapacity of a recipient or the death of a beneficiary. An agency may not reclaim any post-death or post-incapacity payment made more than six years prior to the date of the notice of reclamation; provided, however, that if the account balance at the time the RDFI receives the notice of reclamation exceeds the total amount of post-death or post-incapacity payments made by the agency during such six-year period, this limitation shall not apply and the RDFI shall be liable for the total amount of all post-death or post-incapacity payments made, up to the amount in the account at the time the RDFI receives the notice of reclamation and has had a reasonable opportunity to act on the notice (not to exceed one business day).

* * * * *

■ 5. Amend § 210.11 by revising paragraph (b)(3)(i) to read as follows:

§ 210.11 Limited liability.

* * * * *

(b) *Qualification for limited liability.*

* * * * *

(3)(i) In cases involving the reclamation of Social Security Federal Old-Age, Survivors, and Disability Insurance benefit payments, or benefit payments certified by the Railroad Retirement Board or the Department of Veterans' Affairs, provide the name and last known address of the following person(s):

(A) The recipient and any co-owner(s) of the recipient's account;

(B) All other person(s) authorized to withdraw funds from the recipient's account; and

(C) All person(s) who withdrew funds from the recipient's account after the death or legal incapacity of the recipient or death of the beneficiary.

* * * * *

■ 6. Amend § 210.14 by revising paragraph (a) to read as follows:

§ 210.14 Erroneous death information.

(a) Notification of error to the agency. If, after the RDFI responds fully to the notice of reclamation, the RDFI learns that the recipient or beneficiary is not dead or legally incapacitated or that the date of death is incorrect, the RDFI shall inform the agency that certified the underlying payment(s) and directed the Service to reclaim the funds in dispute.

* * * * *

■ 7. Revise appendix C to part 210 to read as follows:

Appendix C to Part 210—Standard Disclosure for Accounts Receivable Conversion—Notice

Notice to Customers Making Payment by Check

If you send us a check, it will be converted into an electronic funds transfer (EFT). This means we will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours, and will be shown on your regular account statement.

You will not receive your original check back. We will destroy your original check, but we will keep the copy of it. If the EFT cannot be processed for technical reasons, you authorize us to process the copy in place of your original check. If the EFT cannot be completed because of insufficient funds, we may try to make the transfer up to 2 times [and we will charge you a one-time fee of $__, which we will also collect by EFT].

Note: This disclosure must be conspicuous. This means that it should be printed in reasonably large typeface. If this disclosure is combined with other information, it should be set off by contrasting color, by surrounding it with a box, or by using other means to ensure that it is prominently featured.

Dated: March 15, 2004.

Richard L. Gregg,

Commissioner.

[FR Doc. 04–6092 Filed 3–18–04; 8:45 am]

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Federal Register

Friday,
March 19, 2004

Part V

Federal Trade Commission

16 CFR Parts 610 and 698

Free Annual File Disclosures; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Parts 610 and 698

[RIN 3084–AA94]

Free Annual File Disclosures

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Proposed rule, request for comment.

SUMMARY: The recently enacted Fair and Accurate Credit Transactions Act of 2003 (FACT Act or the Act) requires the FTC to adopt rules to require the establishment of a centralized source through which consumers may request a free annual file disclosure from each nationwide consumer reporting agency; a standardized form for such requests; and a streamlined process for consumers to request free annual file disclosures from nationwide specialty consumer reporting agencies. In this action, the FTC is proposing, and seeking comment on, a proposed rule that would establish the centralized source, standardized form, and streamlined process required by the FACT Act.

DATES: Comments must be received by April 16, 2004.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''FACTA Free File Disclosures Proposed Rule, Matter No. R411005'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed to the following address: Federal Trade Commission, FACTA Free Reports, Post Office Box 1031, Merrifield, VA 22116–1031. Please note that courier and overnight deliveries cannot be accepted at this address. Courier and overnight deliveries should be delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form.

An electronic comment can be filed by (1) clicking on *http://www.regulations.gov;* (2) selecting ''Federal Trade Commission'' at ''Search for Open Regulations;'' (3) locating the summary of this Notice; (4) clicking on ''Submit a Comment on this Regulation;'' and (5) completing the form. For a given electronic comment, any information placed in the following fields—''Title,'' ''First Name,'' ''Last Name,'' ''Organization Name,'' ''State,'' ''Country,'' ''Comment,'' and ''Attachment''—will be publicly available on the FTC Web site. The fields marked with an asterisk on the form are required in order for the FTC to fully consider a particular comment. Commenters may choose not to fill in one or more of those fields, but if they do so, their comments may not be considered.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, Washington, DC 20503, Attention: Desk Officer for Federal Trade Commission. Such comments should also be mailed to the following address: Federal Trade Commission, FACTA Free Reports, Post Office Box 1031, Merrifield, VA 22116–1031. Because courier and overnight deliveries cannot be accepted at this address, they should instead be delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments with all required fields completed, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Helen Goff Foster or Sandra Farrington, Attorneys, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3224.

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I. Introduction

The Fair and Accurate Credit Transactions Act of 2003, Public Law 108–159, 117 Stat. 1952 (FACT Act or the Act) was signed into law on December 4, 2003. In part, the Act amends the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 *et seq.*, by imposing new requirements on consumer reporting agencies that compile and maintain files on consumers on a nationwide basis (nationwide consumer reporting agencies), and nationwide specialty consumer reporting agencies, as defined by sections 603(p) and 603(w) of the FCRA, 15 U.S.C. 1681a(p) and (w), respectively. These additional requirements include the obligation to provide, upon request, one free file disclosure—commonly called a credit report—to the consumer annually.[1]

The proposed rule requires nationwide consumer reporting agencies to establish a centralized source to enable consumers, with a single request, to receive annual file disclosures from all nationwide consumer reporting agencies, in accordance with the FACT Act, section 211(d)(1)(A). The proposed rule also includes a standardized form for such requests, as specified in the FACT Act, section 211(d)(1)(B). Further,

[1] The FACT Act refers to the requirement to make ''all disclosures pursuant to [FCRA] section 609 once during any 12-month period'' without charge as free consumer reports. FACT Act 211(a). Section 609 of the FCRA requires disclosure of ''[a]ll information in the consumer's file at the time of the request.'' 15 U.S.C. 1681g(a)(1). To avoid confusion, the proposed rule refers to disclosures made pursuant to FCRA section 609 as ''file disclosures'' and to the free annual disclosures required under the FACT Act as ''annual file disclosures.''

the proposed rule requires nationwide specialty consumer reporting agencies to establish a streamlined process for consumer requests for annual file disclosures, as provided in the FACT Act, section 211(a)(2).

The centralized source required by the proposed rule will provide consumers with the ability to request their free annual file disclosures from each of the nationwide consumer reporting agencies through a centralized Internet Web site, toll-free telephone number, and postal address. The proposed rule also requires the nationwide consumer reporting agencies to establish a standardized form for Internet and mail requests for annual file disclosures, and provides a model standardized form that may be used to comply with that requirement.

Under the proposed rule, the centralized source would not be available to all consumers on the rule's proposed effective date—December 1, 2004. Proposed rule § 610.2(i)(1). In order to ensure a smooth transition, and in response to concerns regarding the volume of consumers who may request annual file disclosures when the rule first becomes effective, under the proposed rule the centralized source will become available to consumers in cumulative stages that roll-out from west to east. See discussion *infra*, section B, *Transition*. The proposed rule also provides that, during periods of extraordinary request volume, the centralized source may redirect, or decline to accept, some requests, provided that the nationwide consumer reporting agencies implement reasonable procedures to anticipate and respond to consumer demand for annual file disclosures. See discussion *infra*, section B, *Adequate Capacity*.

The proposed rule requires nationwide specialty consumer reporting agencies to establish a streamlined process for consumers to request annual file disclosures. Proposed rule § 610.3(a). Under the proposed rule, this streamlined process includes a toll-free telephone number for consumers to make such requests. The proposed rule requires nationwide specialty consumer reporting agencies to make their streamlined process toll-free number available to consumers in specific ways. See discussion *infra*, Section D, *Requirement to Redirect Requests*.

II. Overview of Rule

A. Definitions and Rule of Construction

Definitions

Section 610.1(b) of the proposed rule sets forth certain definitions for the purposes of the proposed rule.

The term ''consumer reporting agency'' is defined under proposed rule § 610.1(b)(5) as provided in section 603(f) of the FCRA, 15 U.S.C. 1681a(f). The proposed rule would apply to two specific types of consumer reporting agencies: ''nationwide consumer reporting agencies'' and ''nationwide specialty consumer reporting agencies.'' Under proposed rule § 610.1(b)(8), the term ''nationwide consumer reporting agency'' means a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, as defined in FCRA section 603(p), 15 U.S.C. 1681a(p). Similarly, the term ''nationwide specialty consumer reporting agency'' is defined under section 610.1(b)(9) of the proposed rule, in accordance with FCRA section 603(w), 15 U.S.C. 1681a(w), as a consumer reporting agency that compiles and maintains files on consumers relating to medical records or payments, residential or tenant history, check writing history, employment history, or insurance claims, on a nationwide basis.

Section 610.1(b)(2) of the proposed rule defines an ''associated consumer reporting agency'' as a consumer reporting agency that maintains consumer files within systems operated by a nationwide consumer reporting agency. Some nationwide consumer reporting agencies have contractual relationships with a number of regional or local consumer reporting agencies. These regional or local consumer reporting agencies, traditionally called ''service bureaus'' or ''affiliates,'' generally are independently owned and operated entities—they are not corporate affiliates [2] of a nationwide consumer reporting agency. Rather, typically, they have a right to house some or all of the consumer data that they own on the systems of one or more nationwide consumer reporting agencies. The nationwide consumer reporting agency with whom such an entity is associated, in turn, has the right to sell that consumer data to its customers.[3] The proposed rule addresses these consumer reporting agencies as ''associated consumer reporting agencies.'' See discussion *infra,* section B, *Disclosure of All Files.*

The proposed rule, section 610.1(b)(7), defines a ''file disclosure'' as any disclosure made pursuant to section 609 of the FCRA.[4] Section 612(a) of the FCRA, 15 U.S.C. 1681j(a), as amended by the FACT Act, provides that nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies must provide ''all disclosures pursuant to [FCRA] section 609 once during any 12-month period upon request of the consumer and without charge to the consumer.'' Accordingly, under proposed rule section 610.1(b)(1), the term ''annual file disclosure'' is a file disclosure that is made upon request, free of charge, in compliance with section 612(a) of the FCRA, 15 U.S.C. 1681j(a), as amended. Although FCRA sections 612(b)–(e) provide for other types of free file disclosures, the term ''annual file disclosure,'' as defined in the proposed rule, refers only to free file disclosures made pursuant to FCRA section 612(a).[5]

Proposed rule section 610.1(b)(10) defines ''request method'' as the method by which a consumer chooses to communicate a request for an annual file disclosure. The FACT Act requires nationwide consumer reporting agencies, subject to regulations to be promulgated by the Commission, to establish a centralized source that will permit consumers to make such requests by three specific request methods: Internet Web site, toll-free telephone number, and mail.

The proposed rule also addresses ''extraordinary request volume.'' The Commission recognizes that there may be times when the volume of consumer requests for file disclosures may be higher than anticipated, such as may overwhelm the systems of a nationwide consumer reporting agency or a

[2] That is to say, associated consumer reporting agencies generally are not under common ownership or control with a nationwide consumer reporting agency. *See* 16 CFR 313.3(a).

[3] The associated consumer reporting agency may also have the right to sell consumer information owned by the nationwide consumer reporting agency.

[4] Section 609 of the FCRA, 15 U.S.C. 1681g, requires every consumer reporting agency, upon request of the consumer, to disclose to the consumer, among other things, ''all information in the consumer's file at the time of the request.''

[5] It should be noted that the FCRA, as amended by the FACT Act, requires consumer reporting agencies to provide a free file disclosure to consumers under a number of different circumstances. In addition, under FCRA sec. 612(f), 15 U.S.C. 1681j(f), a consumer reporting agency must provide file disclosures to consumers for a fee, upon request. The requirement for nationwide consumer reporting agencies to provide annual file disclosures supplements, but does not replace, these other provisions. In other words, a consumer should be able to obtain a free annual file disclosure through the centralized source, once in any 12-month period, even if that consumer has obtained other free or paid file disclosures in that time period. *See* FCRA sec. 612, 15 U.S.C. 1681j.

nationwide specialty consumer reporting agency. The proposed rule limits the liability of a nationwide consumer reporting agency or a nationwide specialty consumer reporting agency during times of such ''extraordinary request volume.'' See proposed rule secs. 610.2(e) and 610.3(c). Section 610.1(b)(6) of the proposed rule defines ''extraordinary request volume'' as occurring when the number of consumers requesting file disclosures in a 24-hour period is more than twice the daily rolling 90-day average of consumers requesting file disclosures. In other words, ''extraordinary request volume'' is reached only when the volume of requests in a 24-hour period is more than two times the daily average request volume of the last 90 days. Due to special considerations during the transition period defined by the proposed rule, however, extraordinary request volume is defined differently during those periods. See discussion *infra* section B, *Transition.*

Under the proposed rule, extraordinary request volume is measured by requests for all types of file disclosures, rather than only requests for annual file disclosures. Although the FACT Act requires the nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies to develop the centralized source and streamlined process described in the proposed rule for the purpose of receiving requests for annual file disclosures, Congress specifically directed the Commission to consider ''the significant demands that may be placed on consumer reporting agencies in providing [annual file disclosures],'' and ''appropriate means to ensure that consumer reporting agencies can satisfactorily meet those demands.'' FACT Act sec. 211(d)(2). The significant demands of providing annual file disclosures include demands associated with simultaneously responding to requests for other types of file disclosures, such as free file disclosures resulting from adverse action under FCRA section 612(b), 15 U.S.C. 1681j(b), and free file disclosures provided in response to suspected fraud under FCRA section 612(c)(3), 15 U.S.C. 1681j(c)(3). Further, consumer reporting agencies may face additional significant demands in responding to inquiries, or requests for reinvestigation,[6] generated through each of these types of file disclosures.[7] Delays in this system caused by excess demand may adversely impact consumers with a specific, immediate need for access to their file disclosures and to reinvestigation procedures. Accordingly, it is appropriate to consider the volume of request for all types of file disclosures in determining ''extraordinary request volume'' for the purpose of limiting liability under the proposed rule. Proposed rule sec. 610.1(b)(6).

Rule of Construction

Section 610.1(c) of the proposed rule sets out a rule of construction to clarify the effect of the examples used in the proposed rule. Given the complexity of the rule and its potential impact on a variety of entities, the Commission has elected, in some instances, to provide examples of conduct that would, and would not, comply with the proposed rule. This section provides that these examples are not intended to be exhaustive; rather they are intended to illustrate how the proposed rule would apply in specific circumstances. The Commission invites comment on whether including examples in the rule is useful, and suggestions on additional or different examples that may be helpful.

B. Centralized Source for Requesting Annual File Disclosures

As noted above, the FACT Act directs the Commission to prescribe regulations, applicable to nationwide consumer reporting agencies, to require the establishment of ''a centralized source'' through which consumers may, with a single request, obtain annual file disclosures from each nationwide consumer reporting agency. FACT Act sec. 211(d)(1)(A). In making such regulations, the FACT Act requires the Commission to consider: (1) The significant demands that may be placed on consumer reporting agencies in providing annual file disclosures; (2) appropriate means to ensure that consumer reporting agencies can satisfactorily meet those demands, including the efficacy of a system of staggering the availability to consumers of annual file disclosures; and (3) the ease by which consumers should be able to contact consumer reporting agencies with respect to access to annual file disclosures. FACT Act sec. 211(d)(2). The Commission has considered all of these factors in formulating the proposed rule.

Purpose of Centralized Source

In accordance with section 211(d) of the FACT Act, proposed rule section 610.2(a) requires the nationwide consumer reporting agencies to establish a ''centralized source'' for the purpose of enabling consumers to make a single request to obtain annual file disclosures from all nationwide consumer reporting agencies. Under § 610.2(b) of the proposed rule, the nationwide consumer reporting agencies must jointly design, fund, implement, maintain, and operate the centralized source for that purpose.

In addition, the centralized source must be designed, funded, implemented, maintained, and operated to meet specific requirements. Under the FACT Act, nationwide consumer reporting agencies are required to provide annual file disclosures to consumers who request them only through the centralized source established pursuant to the proposed rule. FACT Act section 211(a)(2), *codified at* FCRA section 612(a)(1)(B), 15 U.S.C. 1681j(a)(1)(B). Thus, consumers' ability to access the centralized source is the key to their ability to receive annual file disclosures. Accordingly, the standards contained in the proposed rule are designed, in accordance with FACT Act section 211(d)(2)(C), to ensure ''the ease by which consumers should be able to contact consumer reporting agencies with respect to access to [annual file disclosures].''

Required Request Methods

As specified under the FACT Act, section 211(d)(3), proposed rule section 610.2(b)(1) requires the centralized source to include a toll-free telephone number, an Internet Web site, and a mail process for consumers to make requests for annual file disclosures. The centralized source, and each of these request methods, must have adequate capacity to accept requests from the reasonably anticipated volume of consumers contacting the centralized source. Proposed rule § 610.2(b)(2). The reasonably anticipated volume must be determined in compliance with proposed rule § 610.2(c), as discussed below.

The FACT Act requires that consumers be able to request their annual file disclosures through specific request methods, but does not mandate the method by which the nationwide consumer reporting agencies may deliver those file disclosures. FCRA section 610(b), 15 U.S.C. 1681h(b), specifies that disclosures may be made in such form as may be specified by the consumer and available from the

[6] *See* FCRA section 611(a), 15 U.S.C. 1681i(a).

[7] The Commission notes that the FACT Act has expanded consumers' rights to obtain a free file disclosure in a number of ways. *See, e.g.*, FACT Act secs. 112 and 311.

agency. Thus, the proposed rule allows nationwide consumer reporting agencies flexibility in determining what methods of annual file disclosure delivery to make available to consumers.

Collection of Information and Identification of Consumers

Under proposed rule section 610.2(b)(2)(ii), the centralized source may collect only as much information as is reasonably necessary to properly identify the consumer, in compliance with FCRA section 610(a)(1), 15 U.S.C. 1681h(a)(1), and to process the transactions requested by the consumer.[8] This provision of the proposed rule reflects the need to balance two competing goals: (1) Creating a centralized source that will be easy for consumers to use; and (2) allowing the nationwide consumer reporting agencies to identify properly consumers who request their file disclosures through the centralized source, in compliance with FCRA sec. 610(a)(1).

The Commission is concerned that a centralized source that collects too much information may discourage some consumers from requesting their annual file disclosures. Accordingly, the proposed rule limits the amount of information that each consumer reporting agency may collect through the centralized source to only what is reasonably necessary to properly identify the consumer and to complete the request for file disclosure or other transaction requested by the consumer.

The proposed rule permits, however, each nationwide consumer reporting agency the flexibility to implement its own identification procedures for consumers who make file disclosure requests through the centralized source, in order to allow proper identification of consumers and to protect against fraud. File disclosures contain a great deal of very sensitive information. If misdirected to, or fraudulently obtained by, someone other than the consumer to whom it relates, a file disclosure would provide the ideal means for identity theft and other fraudulent activity. In addition, the nationwide consumer reporting agencies each maintain slightly different information in their consumer files, making it difficult to devise a common identification scheme. Moreover, a flexible approach allows the nationwide consumer reporting agencies to adjust to changing threats and patterns of fraudulent activity over time.

In light of these competing concerns, the proposed rule permits each nationwide consumer reporting agency to design and implement its own methods of identifying consumers who make requests through the centralized source, provided that the nationwide consumer reporting agency requires no more information than is reasonably necessary. A consumer who utilizes the centralized source Internet Web site, for example, may be asked for his or her personally identifiable information (*i.e.*, name, address, social security number, date of birth, etc.) once at the beginning of the request process. Each nationwide consumer reporting agency may then, however, require additional information to identify the consumer. Such additional information may include questions regarding the consumer's accounts, such as the amount of the consumer's monthly mortgage payment, or the name of a particular type of creditor. The nationwide consumer reporting agency may then compare the consumer's response to the information contained in the agency's files, to verify the identity of the consumer requesting a file disclosure. Although a centralized source that may require the consumer to respond to additional identification questions does increase the burden on the consumer using the centralized source, the goal of ensuring the security of file disclosures justifies some additional consumer burden.

The Commission is concerned about whether the consumer personally identifiable information collected by nationwide consumer reporting agencies through the centralized source could be used and disclosed by the nationwide consumer reporting agencies, affiliated entities, and third parties, in ways that would adversely affect consumers. This information would include identifying information such as name, address, and social security number, and may also include credit card account number or other method of payment (*i.e.*, if a credit score or a paid product is purchased, or if the account is used as a means of identification). The nationwide consumer reporting agencies presumably already collect these same types of information currently in providing file disclosures and other products to consumers,[9] but it is unclear how they use or disclose it. Therefore, the Commission solicits comment on how the differing types of information currently collected in providing file disclosures are used and disclosed by the nationwide consumer reporting agencies and whether such information should be treated differently when it is collected through the centralized source. See *infra,* section VII, Questions 5b, c, and d.

Information and Instructions

To ensure that consumers may access the centralized source request method of their choice, the proposed rule requires the centralized source toll-free telephone number and Internet Web site to provide information regarding how to make a request for file disclosure through all available request methods. Proposed rule § 610.2(b)(2)(iii).

In addition, proposed rule section 610.2(b)(2)(iv) requires the centralized source to provide clear and easily understandable information and instructions to consumers. This provision of the proposed rule requires the nationwide consumer reporting agencies to communicate to consumers, through the centralized source, information and instructions that may be needed by a consumer to request a free annual file disclosure. Such communications include informing consumers of the progress of their request for a file disclosure while they are engaged in the process of making the request. Proposed rule § 610.2(b)(2)(iv)(A). For a Web site request method, the proposed rule also requires the centralized source to provide access to a ''help'' or ''frequently asked questions'' screen. Proposed rule § 610.2(b)(2)(iv)(B). Finally, in the event that a consumer cannot be properly identified through the centralized source, the proposed rule requires the nationwide consumer reporting agencies to notify the consumer of that fact, and to provide instructions on how to complete the request. Proposed rule § 610.2(b)(2)(iv)(C).

Although proposed rule § 610.2(b)(2)(iv) lists types of information that must be provided to consumers in a clear and easily understandable manner, additional information may be required in order to ensure that all instructions are clear and easily understandable in compliance with the proposed rule. If consumers are unable to understand centralized source instructions on how to obtain their annual file disclosures, the FACT Act provisions requiring such disclosures would be effectively thwarted. Thus, the intent of proposed rule § 610.2(b)(2)(iv) is to ensure that all centralized source

[8] Proposed rule section 610.2(b)(2)(ii) refers to ''transaction(s) requested by the consumer.'' The proposed rule would permit nationwide consumer reporting agencies to advertise and to offer products and services in addition to the required annual file disclosure through the centralized source, provided that these activities do not interfere, detract from, contradict or undermine the purpose of the centralized source . See discussion *infra,* section B, *Communications Through the Centralized Source.*

[9] In addition, much of this information is already in the consumer files of the nationwide consumer reporting agencies.

materials are provided to consumers in plain language, and that the centralized source is easy for consumers to use. Evaluation of centralized source communications by consumer communication experts, and consumer testing, may be instructive in determining whether centralized source materials meet this standard.

Adequate Capacity

Under the FACT Act, nationwide consumer reporting agencies must fulfill consumers' requests for free annual disclosures ''only if the request from the consumer is made using the centralized source established for such purpose.'' FACT Act section 211(a)(2), codified at FCRA section 612(a)(1)(B), 15 U.S.C. 1681j(a)(1)(B). In recognition of the importance of a centralized source with adequate capacity to ensure the ability of consumers to obtain annual file disclosures, the proposed rule contains two requirements relating to capacity. The first is the requirement, contained in proposed rule § 610.2(b)(2)(i), that the centralized source have adequate capacity to accept requests from the reasonably anticipated volume of consumers contacting the centralized source.

The second is the requirement, contained in proposed rule § 610.2(c), that nationwide consumer reporting agencies implement reasonable procedures to anticipate and respond to the volume of consumers who will contact [10] the centralized source. This requirement includes developing and implementing contingency plans to address circumstances that may materially and adversely impact the operation of the nationwide consumer reporting agency, a centralized source request method, or the centralized source itself. Examples of the types of circumstances for which the nationwide consumer reporting agencies should develop contingency plans are natural disasters, telecommunications interruptions, equipment malfunctions, labor shortages, computer viruses, coordinated hacker attacks, and seasonal or other fluctuations in consumer request volume. Under the proposed rule, the required contingency plans must include measures to minimize the impact of such circumstances, including taking all reasonable steps to restore the centralized source to normal operating status as quickly as possible.

Even with careful planning and preparation, however, it may be difficult for the nationwide consumer reporting agencies to anticipate consumer request volume accurately under all circumstances. In light of these uncertainties, and in consideration of the possible impact of unexpected and extraordinary demand for file disclosures on the ability of the nationwide consumer reporting agencies to provide annual file disclosures, the proposed rule limits the liability of nationwide consumer reporting agencies in times of ''extraordinary request volume.'' When a centralized source request method, the centralized source as a whole, or an individual nationwide consumer reporting agency experiences extraordinary request volume, the agency will not be deemed in violation of the proposed rule's adequate capacity requirement (proposed rule § 610.2(b)(2)(i)) provided that it has implemented reasonable procedures to anticipate and respond to the volume of consumers who will contact the centralized source, in compliance with proposed rule § 610.2(c).

In other words, the proposed rule would allow a nationwide consumer reporting agency that complies with § 610.2(c) to decline to accept some requests for annual file disclosures during times when a centralized source request method, the centralized source as a whole, or the nationwide consumer reporting agency experiences extraordinary request volume.[11] The FACT Act requires nationwide consumer reporting agencies to provide annual file disclosures within 15 days of when the request is received. By permitting nationwide consumer reporting agencies to decline to accept some requests for annual file disclosures during times of extraordinary request volume, the proposed rule allows the nationwide consumer reporting agencies to postpone receiving those requests—and thereby postpone the running of the 15-day delivery requirement—for a reasonable period of time. The proposed rule would allow the nationwide consumer reporting agencies to ask those consumers to make their requests again at a time when the centralized source is reasonably expected to be able to accept them, proposed rule § 610.2(c)(2)(i)(B), or to collect the request information in a queue to be accepted for processing at a reasonable later time, proposed rule § 610.2(c)(2).

As described under *Definitions* above, extraordinary request volume is any 24-hour volume greater than twice the daily rolling 90-day average request volume. A request volume that is two times greater than the 90-day daily rolling average is likely a fluctuation of sufficient magnitude to warrant relief from the adequate capacity requirement of the rule. The trigger for this relief is linked to the ''rolling average'' of requests received in order to accommodate request volume that may increase gradually over time. The proposed rule contemplates that the centralized source should adapt to such changes and be able to handle additional volume over time, if needed.

During the initial months after the rule becomes effective, however, the previous 90-day average of file disclosures likely will not adequately reflect the volume that may be expected, because free annual file disclosures have not previously been available from a centralized source. For this reason, the proposed rule addresses consumer request volume differently during the transition period, when request volume will be hardest to predict because of the lack of comparable historical data, and when publicity may be greatest. See discussion supra, this section, *Transition.*

The Commission has considered, as required under FACT Act section 211(d)(2) ''appropriate means to ensure that consumer reporting agencies can satisfactorily meet [the demands of providing annual file disclosures], including the efficacy of a system of staggering the availability to consumers of such [annual file disclosures].'' In particular, the Commission considered whether a centralized source that made annual file disclosures available to specific segments of the population for a limited period of time (for example, during a birth month or birth quarter) each year would be effective and appropriate. Based upon the information currently available, there is no basis for concluding ongoing staggering of the availability of annual file disclosures is necessary.

[10] It is important to note that nationwide consumer reporting agencies are required to anticipate the number of consumers who will contact the centralized source. Because nationwide consumer reporting agencies must meet this requirement during the transition periods defined by the proposed rule under § 610.2(i), this language is intended to include consumers who contact the centralized source at a time when it is not yet available in their state. Under this requirement, the nationwide consumer reporting agencies must adjust their estimations of anticipated request volume in light of such consumers, and must respond to such consumers. They would not be required, however, to accept requests from such consumers prior to the time that the centralized source is available to consumers residing in those states.

[11] It is important to note that, in the event of extraordinary request volume affecting a particular request method, the proposed rule would require nationwide consumer reporting agencies to direct consumers to other available request methods. Proposed rule § 610.2(c)(2)(i)(A). Thus, extraordinary request volume affecting just one request method would not necessarily lead to a limitation on liability in relation to the operation of the other request methods.

The FACT Act, and the proposed rule, provide nationwide consumer reporting agencies with considerable flexibility in meeting the significant demands placed upon them. The FACT Act allows nationwide consumer reporting agencies15 days from the time a request for an annual file disclosure is received to provide that disclosure. FACT Act section 211(a), *codified* at FCRA section 612(a)(2), 15 U.S.C. 1681j(a)(2). The Act also allows nationwide consumer reporting agencies a significantly longer period of time to resolve requests for reinvestigation when they originate from an annual file disclosure. FACT Act section 211(a), *codified at* FCRA section 612(a)(3), 15 U.S.C. 1681(a)(3). In addition, annual file disclosures must be provided only once in a 12-month period. The 12-month limitation may result in the mirroring of the demand-smoothing effects of the transition roll-out scheme. This provides an ongoing limitation on unexpected volume after the transition period—*i.e.*, a consumer who received an annual file disclosure when his or her state first became eligible under the transition provisions is not eligible to request another such disclosure for 12 months.[12] Moreover, the proposed rule limits the liability of nationwide consumer reporting agencies during times of extraordinary request volume, proposed rule § 610.2(e), and provides additional flexibility during the transition when uncertainty is greatest, proposed rule § 610.2(i)(2)–(3). After the transition period, the nationwide consumer reporting agencies may reasonably be expected to provide access to annual file disclosures through a centralized source to all consumers who request them. The Commission intends, however, to closely monitor the progress of the transition and the capability of the nationwide consumer reporting agencies to respond to actual request volume, and may adjust the rule, as necessary or appropriate, in the future.

Joint Establishment and New Entrants

As noted above, under § 610.2(b) of the proposed rule, all nationwide consumer reporting agencies must jointly design, fund, implement, maintain, and operate the centralized source. The Commission is aware of three entities that meet the FCRA section 603(p) definition of nationwide consumer reporting agency.[13] It is possible, however, that additional nationwide consumer reporting agencies may exist, or be created, in the future. Any entity that meets the definition of nationwide consumer reporting agency in FCRA section 603(p), 15 U.S.C. 1681a(p), cannot be excluded by the currently identified nationwide consumer reporting agencies from participating jointly in the centralized source. Moreover, all participants in the centralized source, including any new entrants, must comply with, and may be jointly liable for any violations of, proposed rule section 610.2.

Further, although the proposed rule requires nationwide consumer reporting agencies, which are presumably competitors, to jointly design, fund, implement, maintain, and operate the centralized source required under the FACT Act, nothing in the proposed rule would permit any activity that is otherwise prohibited by applicable United States antitrust laws.

Disclosure of All Files

Some nationwide consumer reporting agencies house data owned by an associated consumer reporting agency in systems operated by the nationwide consumer reporting agency. By virtue of such relationships with associated consumer reporting agencies, a nationwide consumer reporting agency, which does not itself own consumer files in a localized area or region of the country, is able to provide consumer reports on consumers residing in that area or region to its customers. These relationships raise the issue of whether the nationwide consumer reporting agencies will provide file disclosures through the centralized source for consumers whose information is owned by an associated consumer reporting agency. If the nationwide consumer reporting agencies do not provide annual file disclosures to those consumers, consumers in some areas would be able to obtain file disclosures from only one or two nationwide consumer reporting agencies through the centralized source. It appears, however, that Congress intended consumers in all areas of the country to be able to obtain annual file disclosures from all nationwide consumer reporting agencies through the centralized source. ''The centralized system shall allow consumers to obtain free reports from *all three* [nationwide consumer reporting] agencies using a single request.'' S. Rep. No.108–166, at 17 (2003) (Emphasis added).[14] Accordingly, the proposed rule requires the nationwide consumer reporting agencies to provide annual file disclosures to any consumer that requests one if the consumer reporting agency has the ability to provide a consumer report to a third party relating to that consumer.[15] Proposed rule § 610.2(d).

Security

As noted above, the information collected and disclosed through the centralized source may be extremely sensitive. Unauthorized access to this sensitive information could lead to identity theft and other consumer harm. To address this risk, the proposed rule requires nationwide consumer reporting agencies to comply with the Standards for Safeguarding Customer Information, 16 CFR 314.3 and 314.4 (the Safeguards Rule), regarding all personally identifiable information collected through or disclosed by the centralized source. Proposed rule § 610.2(f).[16] The requirements imposed by the Safeguards Rule form the core of a reasonable information security program and are therefore appropriate in this context.

[12] It is important to note that the FACT Act requires annual file disclosures to be made *once in any 12 month period.* This language indicates that nationwide consumer reporting agencies are required to provide these disclosures to consumers, at most, once every 12 months, and not once in each calendar year.

[13] These entities are Equifax, Inc., Experian, and Trans Union LLP.

[14] Senator Sarbanes reiterated this intent, stating, ''The bill allows consumers to receive a free credit report annually from *each of the three* national credit reporting agencies.'' 149 Cong. Rec., S. 13851 (daily ed. Nov. 4, 2003) (Emphasis added). Both the Report of the Committee on Banking, Housing and Urban Affairs, and Senator Sarbanes' statement addressed S. 1753, the Senate version of the FACT Act. S. 1753 contained a ''centralized source'' requirement that is virtually identical to that contained in the final FACT Act bill.

[15] The Commission is not aware of any circumstances under which the nationwide consumer reporting agencies, through their relationships with associated consumer reporting agencies, are unable to provide consumer reports relating to consumers residing in a specific area of the country. Thus, this requirement will accomplish Congress's intent for the centralized source: it will create a system whereby every consumer can get their annual file disclosures from all nationwide consumer reporting agencies with a single request.

[16] That Rule requires financial institutions over which the FTC has jurisdiction to develop, implement, and maintain a comprehensive information security program that contains administrative, technical and physical safeguards. As part of its program, each financial institution must (1) designate one or more employees to coordinate its program; (2) assess risks to the security of customer information; (3) design and implement safeguards to address risks, and test and monitor their effectiveness over time; (4) oversee service providers and enter into contracts that require them to maintain safeguards; and (5) adjust the program to address changes that may affect safeguards. The Safeguards Rule is available on the Commission's Web site at *http://www.ftc.gov/os/2002/05/67fr36585.pdf.* Guidance for businesses on complying with the Safeguards Rule and achieving better safeguards can also be found on the FTC's Web site at *http://www.ftc.gov/privacy/privacyinitiatives/safeguards_educ.html.*

Communications Through the Centralized Source

The centralized source established in compliance with this part will provide the nationwide consumer reporting agencies with the means to communicate with interested consumers about a variety of topics related to consumer reporting and file disclosures. This affords the nationwide consumer reporting agencies an unparalleled opportunity to contribute to consumer education and understanding regarding consumer reports and related products. It also presents the nationwide consumer reporting agencies with a unique opportunity to market credit-related products and services to a group of consumers who may be interested in such products.

The proposed rule would not prohibit the nationwide consumer reporting agencies advertising their products and services through the centralized source, nor offering those products and services, as well as additional file disclosures, directly through the centralized source. If done appropriately, access to some additional information, disclosures, products, or services through the centralized source—for example disclosure of the consumer's credit score—may be beneficial and convenient for consumers, and efficient for the nationwide consumer reporting agencies.

To ensure that the purpose of the centralized source, as expressed in proposed rule § 610.2(a), remains paramount in the centralized source's design, funding, implementation, operation and maintenance, however, the proposed rule § 610.2(g) specifies that any communications made through the centralized source may not interfere with, detract from, contradict, or otherwise undermine the purpose of the centralized source. The proposed rule provides examples of conduct that would interfere with, detract from, contradict or undermine the purpose of the centralized source, in violation of § 610.2(g) of the proposed rule. In addition, the FTC Act's prohibition against unfair or deceptive acts or practices also would apply to the nationwide consumer reporting agencies in their joint operation of centralized source, just as it does in their individual operations. 15 U.S.C. 45(a).

Transition

Section 211(d)(4) of the FACT Act requires that the Commission's regulations provide for an ''orderly transition'' for nationwide consumer reporting agencies to fully implement the centralized source. The FACT Act directs that this transition should be conducted in a manner that does not temporarily overwhelm such consumer reporting agencies with requests for disclosures beyond their capacity to deliver; and does not deny creditors, other users, and consumers access to consumer reports on a time-sensitive basis for specific purposes, such as home purchases or suspicions of identity theft, during the transition period.

The Commission staff considered many different proposals for achieving a smooth transition, including staggering availability of annual file disclosures according to the birth month or birth quarter of the consumer. These proposals would require a year to fully roll-out, and there is concern that birth month or birth quarter scheme may be difficult to convey efficiently to consumers. Further, it is clear that once the centralized source is designed and implemented, its capacity cannot be expanded quickly, *i.e.*, in a month or less. As a result, these proposals were ultimately rejected.

Accordingly, the proposed rule requires a cumulative regional roll-out for the centralized source. Under proposed rule § 610.2(i), the centralized source will become available to consumers by region, starting in the West and moving eastward across the country, at preset intervals. Consumers residing in the western part of the United States (California and 12 other western states) will have access to the centralized source beginning on December 1, 2004.[17] Each phase of the transition will last three months. After three months, on March 1, 2005, consumers in 12 midwest states also will become eligible to request their annual file disclosures from the centralized source. On June 1, 2005, the centralized source will become available to consumers in 11 southern states. Finally, on September 1, 2005, the centralized source will become available to all remaining consumers, including those residing in eastern states, the District of Columbia, and all U.S. territories and possessions.[18] This regional roll-out plan is designed to provide for an orderly transition to a national system of free annual file disclosures in a manner that complies with section 211(d)(4) of the FACT Act. Further, the regional roll-out can be easily understood by consumers, and will be complemented by local and regional press coverage which will remind consumers when the centralized source becomes available to their state or media market.[19]

Predicting accurately the volume of consumer requests that will result when this new annual file disclosure first becomes available is extremely difficult. The absence of comparable historical data, the unpredictable effect of nationwide media coverage and other publicity events, and the uncertain reaction of consumers make any analysis of anticipated request volume in the months immediately following the effective date of the rule inherently uncertain. To address these uncertainties, the proposed rule contains a multi-faceted approach to consumer request volume.

From the beginning of the transition and beyond, the nationwide consumer reporting agencies must be prepared to accept requests from the reasonably anticipated number of consumers who will contact them when the centralized source is first made available. Proposed rule § 610.2(l)(2)(i). Although the precise demand for consumer free annual file disclosures on a nationwide basis is largely unknown, there is some available information that appears to be instructive in anticipating request volume when the rule becomes effective. For example, according to a Congressional Research Service Report to Congress, the consumer request rate for file disclosures in states where free annual disclosures are not currently available is 0.5% to 2%. In those states where consumers are, by state law, already guaranteed the right to a free annual disclosure, the request rate ranges from 3.5% to 10%. This represents an average disclosure rate that is 231% higher than the request rate in other states.[20] Based upon these statistics alone, and taking into account also the publicity likely to be generated by the promulgation of the final rule, it would be reasonable to anticipate that the number of requests for annual file disclosures will be 300% of the current disclosure rate, absent any unanticipated intervening factors.[21]During

[17] According to the 2000 U.S. Census, these states account for 22.1% of total U.S. population.

[18] According to the 2000 U.S. Census, the first phase (western region) contains approximately 63.1 million people, phase two (midwest region) contains approximately 64.4 million people, phase three (southern region) contains approximately 76.7 million people, and phase four (eastern region and all others) contains approximately 81.4 million consumers.

[19] The regional divisions do not divide metropolitan statistical areas.

[20] Loretta Nott and Angie Welborn, ''A Consumer's Access to Free Credit Report: A Legal and Economic Analysis,'' Congressional Research Service, Library of Congress, July 21, 2003, pp. 11.

[21] This estimate does not relieve the nationwide consumer reporting agencies of their obligation to plan for anticipated volume. Rather, absent unforeseen mitigating factors, the current data

the initial week of operations, extraordinary request volume is defined as twice the reasonably predicted consumer request volume.

After centralized source operations commence, however, the nationwide consumer reporting agencies will have actual request volume data for the centralized source. The proposed rule provides two separate request volume triggers during this second period—from December 8, 2004 through the end of the transition on August 31, 2005,—that are based on the actual volume of consumer requests received in the immediately preceding period, *i.e.*, after the centralized source is operational.

First, the proposed rule generally provides relief for the nationwide consumer reporting agencies when request volume reaches twice the rolling daily average of requests in the immediately preceding seven-day period. During such times, the proposed rule provides that the nationwide consumer reporting agencies are not in violation of the proposed rule's adequate capacity requirement as long as they continue to implement reasonable procedures to anticipate and respond to demand. As a practical matter, this would allow the nationwide consumer reporting agencies to delay accepting requests for file disclosures until such time as the request volume falls below the extraordinary request volume level. Twice the daily rolling seven-day average volume is intended as a reasonable approximation of extraordinary volume during the transition.[22] It provides a reasonable level of protection for the nationwide consumer reporting agencies, when balanced against the goal of providing consumers with annual file disclosures in as easy a manner as possible.

Second, the proposed rule provides nationwide consumer reporting agencies with an option, in the transition period, during times of high request volume that do not meet reach the extraordinary request volume benchmark. Under proposed rule § 610.2(i)(3), when consumer request volume exceeds 115% of the rolling daily seven-day average, the nationwide consumer reporting agencies may place requests into a queue for processing at a reasonable later time. This alternative procedure will benefit both consumers and the nationwide consumer reporting agencies. It will eliminate the need for consumers to reinitiate contact with the centralized source in order to obtain an annual file disclosure, and provides a measure of relief to the nationwide consumer reporting agencies during periods of high demand.

Further, the nationwide consumer reporting agencies' duty to plan for and minimize the impact of circumstances that may materially and adversely impact the operation of the centralized source, a particular request method, or an individual nationwide consumer reporting agency, under § 610.2(c), continues to apply during the initial transition period.

C. Standardized Form for Annual File Disclosures

Section 211(d) of the FACT Act directs the Commission to prescribe a regulation requiring that nationwide consumer reporting agencies employ a standardized form for consumers to request, either by mail or through an Internet Web site, free annual file disclosures from the centralized source. Section 610.2(b)(3) of the proposed rule requires that the nationwide consumer reporting agencies establish this form, and make it available through the centralized source. In addition, the Commission proposes a model form, to be published in 16 CFR part 690, Appendix D. Nationwide consumer reporting agencies may use this form to comply with section 610.2(b)(3) of the proposed rule. The proposed form contains instructions and requests personally identifiable information that appears to be reasonably necessary for the processing of consumer requests. Nationwide consumer reporting agencies may require additional categories of information, provided such information is reasonably necessary to process the request, consistent with the standard set forth in section 610.2(b)(2)(ii) of the proposed rule.

Consistent with the FACT Act's amendment to section 609(a)(1) of the FCRA, 15 U.S.C. 1681g(a)(1), beginning December 1, 2004, nationwide consumer reporting agencies must offer consumers the option of receiving their file disclosures with truncated social security numbers. The model form proposed in proposed rule § 690, Appendix D, provides consumers with the ability to elect to have their Social Security number truncated accordingly. In addition, pursuant to FCRA section 610(b), 15 U.S.C. 1681h(b), a consumer using the standardized form may elect to use any method of delivery made available by the nationwide consumer reporting agencies operating the centralized source.

D. Streamlined Process for Requesting Annual File Disclosures

Section 211 of the FACT Act also requires nationwide specialty consumer reporting agencies to provide annual file disclosures to consumers, once during any 12-month period upon the request of the consumer and without charge to the consumer. Under section 603(w) of the FCRA, 15 U.S.C. 1681a(w), a ''nationwide specialty consumer reporting agency'' means ''a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis relating to (1) medical records or payments; (2) residential or tenant history; (3) check writing history; (4) employment history; or (5) insurance claims.''

The FACT Act directs the Commission to prescribe regulations to require the establishment of ''a streamlined process'' for consumers to request their free annual file disclosures from the nationwide specialty consumer reporting agencies. Moreover, the statute requires that, at a minimum, the streamlined process shall include the establishment by each nationwide specialty consumer reporting agency of a toll-free telephone number for such requests. FACT Act section 211(a), *codified at* FCRA section 612(a), 15 U.S.C. 1681j(a). In promulgating the regulations applicable to nationwide specialty consumer reporting agencies as required by the FACT Act, the Commission must consider: the significant demands that may be placed on consumer reporting agencies in providing annual file disclosures; appropriate means to ensure that consumer reporting agencies can satisfactorily meet those demands, including the efficacy of a system of staggering the availability to consumers of such file disclosures; and the ease by which consumers should be able to contact consumer reporting agencies with respect to access to such file disclosures. FACT Act, seciton 211(a)(2)(a)(C)(ii).

Streamlined Process Requirements

In accordance with the statutory mandate, the rule requires each nationwide specialty consumer reporting agency to establish a streamlined process for accepting and processing consumer requests for annual file disclosures. Proposed rule § 610.3(a). The proposed rule requires that the streamlined process include toll-free telephone numbers for consumers to request their annual file disclosures. Because some consumers

indicates that the initial volume of requests is reasonably likely to be approximately three times the current nationwide request volume. The Commission solicits comment on this estimate.

[22] Because it is tied to a short time period—*i.e.*, seven days—this standard for extraordinary request volume in fact requires rapid expansion of the system. If extraordinary levels of demand persist, the system's capacity would have to double every week to remain in compliance.

may prefer to request file disclosures by mail or other methods that may be offered by the nationwide specialty consumer reporting agency, the proposed rule requires that when consumers contact the nationwide specialty consumer reporting agency via its toll-free telephone number, they must be given access to clear and easily understood instructions for making the request by any available request method offered by the nationwide specialty consumer reporting agency.

It is also important that the required toll-free telephone number required by the FACT Act and the proposed rule be readily available to consumers. Thus, the proposed rule requires the number to be published in any telephone directory in which any telephone number for the nationwide specialty consumer reporting agency is listed, proposed rule § 610.3(a)(1)(ii), and that it be posted on any Web site that the nationwide specialty consumer reporting agency owns or maintains, proposed rule § 610.3(a)(1)(iii).[23] It is important to note that nothing in the rule requires a nationwide specialty consumer reporting agency to establish a Web site; however, if an agency chooses to have a Web site, it must post its toll-free number and streamlined process instructions on that site.

The proposed rule does not require a nationwide specialty consumer reporting agency to provide specific request methods, other than the toll-free telephone number described above. In the past, nationwide specialty consumer reporting agencies may have had limited demand for file disclosures, as compared to the demand that nationwide consumer reporting agencies may typically encounter. As a result, many nationwide specialty consumer reporting agencies may be relatively inexperienced in providing file disclosures to consumers on a large scale. The proposed rule's requirements relating to establishment of a toll-free telephone number for file disclosure requests is likely sufficient to facilitate consumer access to annual file disclosures from nationwide specialty consumer reporting agencies, and also takes into account the significant demands that may be placed upon those agencies in providing annual file disclosures to all consumers upon request.

Similar to the requirements relating to the centralized source discussed in section B, above, the proposed rule also requires the streamlined process to have adequate capacity to accept reasonably anticipated volume, proposed rule § 610.3(a)(2)(i); to collect only as much personal information as is reasonably necessary to properly identify the consumer, proposed rule § 610.3(a)(2)(ii); and to provide clear and easily understandable information and instructions, proposed rule § 610.3(a)(2)(iii). Nationwide specialty consumer reporting agencies, like nationwide consumer reporting agencies, must implement reasonable procedures to anticipate and respond to the volume of consumers who will contact the nationwide specialty consumer reporting agency to request annual file disclosures. Proposed rule § 610.3(b). Provided that they implement such reasonable procedures, they will not be deemed in violation of the adequate capacity requirement in times of ''extraordinary request volume.'' Proposed rule § 610.3(c). Nationwide specialty consumer reporting agencies also must comply with the FTC Safeguards rule, 16 CFR part 314, for information collected and disclosed through the streamlined process. Proposed rule § 610.3(d). These requirements are nearly identical to those imposed upon nationwide consumer reporting agencies under section 610.2 of the proposed rule. See discussion *supra*, section B.

Requirement To Accept or Redirect Requests

The FACT Act requires nationwide consumer reporting agencies to provide annual file disclosures upon request, but only through the centralized source. There is no similar statutory limitation applicable to the streamlined process for the specialty consumer reporting agencies. Many consumers may request their free annual file disclosures through a method other than the streamlined process established in compliance with this part. Therefore, the rule requires specialty consumer reporting agencies either to honor those requests, or to redirect the consumer to the streamlined process. Proposed rule § 610.3(e).

Transition for the Streamlined Process

The proposed rule outlines a transition for the streamlined process that is more limited than that for the centralized source, due to the more limited requirements imposed on nationwide specialty consumer reporting agencies compared to those imposed on nationwide consumer reporting agencies. Although nationwide specialty consumer reporting agencies must establish and operate a streamlined process with adequate capacity to meet consumer demand for free annual file disclosures, they will be excused from this requirement during the first three months after the rule is effective when experiencing extraordinary request volume of more than twice the anticipated request volume. After February 28, 2005, extraordinary request volume will be calculated as twice the rolling daily 90-day average.

E. Effective Dates

The provisions of the proposed rule relating to the centralized source, proposed rule § 610.2, and those relating to the streamlined process rule, proposed rule § 610.3, are proposed to become effective on December 1, 2004.

The FACT Act requires that the Commission issue centralized source regulations in final form no later than six months after the enactment date of the FACT Act, and that these rules take effect no later than six months after the date on which the regulations are issued in final form. After considering the FACT Act requirements under section 211(d),[24] the Commission proposes to make the centralized source final rule effective on December 1, 2004, nearly a full six months after the final regulations will have been issued.

For the portions of the rule relating to nationwide specialty consumer reporting agencies and the streamlined process, the statute allows the Commission to set an effective date of up to nine months from the date on which the final regulations will issue. In proposing its rule for the nationwide specialty consumer reporting agencies, the Commission has considered the factors required by section 211(a) of the FACT Act and determined that

[23] This provision is not intended to require nationwide specialty consumer reporting agencies to post their toll-free telephone number on every page of a Web site. Rather, it is intended to require them to provide a clear and prominent link to such information on any Web site that the nationwide consumer reporting agency owns or maintains.

[24] The FACT Act requires the Commission to consider: the significant demands that may be placed on consumer reporting agencies in providing annual file disclosures; appropriate means to ensure that consumer reporting agencies can satisfactorily meet those demands, including the efficacy of a system of staggering the availability to consumers of such disclosures; and the ease by which consumers should be able to contact consumer reporting agencies with respect to access to such consumer reports. FACT Act sec. 211(d)(2). In addition, section 211(d)(4) of the Act requires that the Commission regulations provide for an orderly transition for nationwide consumer reporting agencies to the centralized source, in a manner that: does not temporarily overwhelm such consumer reporting agencies with requests for disclosures beyond their capacity to deliver; and does not deny creditors, other users, and consumers access to consumer reports on a time-sensitive basis for specific purposes, such as home purchases or suspicions of identity theft, during the transition period.

December 1, 2004, is an appropriate effective date for these provisions as well. The Commission recognizes that while nationwide specialty consumer reporting agencies will need some time to develop and implement the streamlined process required under the proposed rule, it appears that six months is adequate, given the limited requirements of the rule. The Commission invites comment and specific information on whether a longer time period to establish the streamlined process required under the proposed rule is necessary and appropriate.

F. Substantially Nationwide Consumer Reporting Agencies

Section 211(d)(6)(A) of the FACT Act directs the Commission to determine, by rulemaking, ''whether to require a consumer reporting agency that compiles and maintains files on consumers on substantially a nationwide basis, other than one described in section 603(p) of the Fair Credit Reporting Act, to make free consumer reports available upon consumer request, and if so, whether such consumer reporting agencies should make such free reports available through the centralized source described in paragraph (1)(A).''

The term ''a consumer reporting agency that compiles and maintains files on consumers on substantially a nationwide basis, other than one described in section 603(p) of the Fair Credit Reporting Act'' (hereinafter ''substantially nationwide consumer reporting agencies'') is not defined under the FCRA or under the FACT Act. The characteristics and role of entities that meet this description require extensive evaluation. The FACT Act requires the Commission to consider the number of consumer reports sold by such entities, the overall scope of such entities' operations, the costs to such entities of providing annual file disclosures to consumers, and the competitive viability of such entities if they are required to provide free annual file disclosures. In light of the information currently available to it, the Commission proposes a determination that substantially nationwide consumer reporting agencies should not, at this time, be required to provide annual file disclosures, and it is therefore not proposing a rule that would require any such agency to provide such disclosures. The Commission invites comment relating to substantially nationwide consumer reporting agencies. The Commission may, at a later time, determine that such entities should provide annual file disclosures, and that such disclosures should be made through the centralized source required by this proposed rule.

III. Invitation To Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments addressing the issues raised by this Notice. Written comments must be received on or before April 16, 2004. Comments should refer to ''FACTA Free File Disclosures Proposed Rule, Matter No. R411005'' to facilitate the organization of comments. In addition, commenters should key their comments to the particular question or section of the proposed rule to which they relate. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed to the following address: Federal Trade Commission, FACTA Free Reports, Post Office Box 1031, Merrifield, VA 22116–1031. Please note that courier and overnight deliveries cannot be accepted at this address. Courier and overnight deliveries should be delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.''[25]

An electronic comment can be filed by (1) clicking on *http://www.regulations.gov*; (2) selecting ''Federal Trade Commission'' at ''Search for Open Regulations;'' (3) locating the summary of this Notice; (4) clicking on ''Submit a Comment on this Regulation;'' and (5) completing the form. For a given electronic comment, any information placed in the following fields—''Title,'' ''First Name,'' ''Last Name,'' ''Organization Name,'' ''State,'' ''Country,'' ''Comment,'' and ''Attachment''—will be publicly available on the FTC Web site. The fields marked with an asterisk on the form are required in order for the FTC to fully consider a particular comment. Commenters may choose not to fill in one or more of those fields, but if they do so, their comments may not be considered.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, Washington, DC 20503, Attention: Desk Officer for Federal Trade Commission. Such comments should also be mailed to the following address: Federal Trade Commission, FACTA Free Reports, Post Office Box 1031, Merrifield, VA 22116–1031. Because courier and overnight deliveries cannot be accepted at this address, they should instead be delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments with all required fields completed, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

IV. Communications by Outside Parties to Commissioners and Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. 16 CFR 1.26(b)(4).

V. Paperwork Reduction Act

The Commission has submitted this proposed Rule and a Supporting Statement for Information Collection Provisions to the Office of Management and Budget (''OMB'') for review under the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501–3517. The FACT Act and proposed Rule require nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies to disclose information to third parties by requiring those consumer reporting agencies to

[25] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

provide to consumers, upon request, one annual file disclosure. Overall, the Commission staff estimate that the average annual information collection burden during the three-year period for which OMB clearance is sought will be 198,960 hours. The estimated annual labor cost associated with these paperwork burdens is $8.41 million.

The Commission staff estimate, based on their knowledge of the industry, that consumers currently receive approximately 15.2 million free file disclosures.[26] The staff estimate that in 2005 and 2006, the nationwide consumer reporting agencies and the nationwide specialty consumer reporting agencies will receive 35.1 million requests per year from consumers for annual file disclosures.[27] Thus, the staff predict that consumer reporting agencies will receive an average of 16.6 million new annual file disclosure requests per year during the period for which clearance is requested.[28]

Annual File Disclosures Provided Through the Internet

Both nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies will likely handle the overwhelming majority of consumer requests through internet Web sites.[29] The annual file disclosures requests processed through the internet will not impose any hours burden per request on the nationwide and nationwide specialty consumer reporting agencies, even though there will be some periodically recurring time and investment required to adjust the internet capacity needed to handle the new changing request volume. Consumer reporting agencies will likely make such adjustments by negotiating or renegotiating outsourcing service contacts annually or as conditions change. Negotiating and re-negotiating such contracts requires the time of trained personnel. The staff estimate that negotiating such contracts will require a total of 8,320 hours and will cost a total of $390,707.[30] Such activity is treated as an annual burden of maintaining and adjusting the changing internet capacity requirements.

Annual File Disclosures Requested Over the Telephone

Most of the telephone requests for annual file disclosures will also be handled in an automated fashion, without any additional personnel being required to process the requests. As in the case of the internet, there will be some time and investment required to increase and administer the automated telephone capacity needed to handle the new increased volume of requests. The nationwide and nationwide specialty consumer reporting agencies will likely make such adjustments by negotiating or renegotiating outsourcing service contacts annually or as conditions change. The staff estimates that it will require a total of 6,240 hours and will cost a total of $282,422.[31] This also is treated as an annual recurring burden necessary to obtain, maintain and adjust automated call center capacity.

A small percentage of those phoning the centralized source or the nationwide speciality consumer reporting agencies will not have phone equipment compatible with an automated system and may need to be processed by a live operator.[32] The staff estimate based on their knowledge of the industry that each of these requests will take 5 minutes to process, for a total of 3,319 additional hours of operator time. [(39,824 × 5 minutes) / 60 minutes = 3,319 hours].

Annual File Disclosures That Require Processing by Mail

The staff estimates, based on their knowledge of the industry, that a small percentage of consumers (estimated at 1% of 16.6 million or 166,000) will request an annual file disclosure through U.S. postal service mail. The staff estimates that 10 minutes per request is required to handle these requests, thereby requiring 27,667 hours of time by clerical personnel. [(166,000 × 10 minutes) / 60 minutes = 27,667 hours].

In addition, whenever the requesting consumer cannot be identified using an automated method (a Web site or automated telephone service), it will be necessary to redirect that consumer to send identifying material along with the request by mail. The staff estimates that such a problem will occur in about 5% (or 821,370) of the new requests. The staff estimates that inputting and processing such requests will require approximately 10 minutes per redirected request. Thus, these annual file disclosures will require 136,895 hours of clerical time. [(821,370 × 10 minutes) / 60 minutes = 136,895 hours].

Instructions to Consumers

The proposed rule also provides that certain instructions be provided to consumers. *See* proposed rule sections 610.2(b)(2)(iv)(A,B), 610.3(a)(2)(iii)(A,B). On the centralized source Web site, the instructions to consumers will be embedded in the Web site and will require no additional time or cost on the part of the nationwide consumer reporting agencies. Similarly, on the automated telephone systems, the

[26] *See* Loretta Nott and Angie Welborn, ''A Consumer's Access to a Free Credit Report: A Legal and Economic Analysis,'' Congressional Research Service, Library of Congress, July 21, 2003. Consumers are able to receive these file disclosures for free because of adverse action notices and state laws in certain states that give consumers the right to receive free file disclosures.

[27] The nationwide consumer reporting agencies have not provided a precise prediction of the number of additional requests they will receive but have voiced their concern that it will be very large. The staff's estimate is based on a rough comparison provided by the Consumer Data Industry Association of the percentage of eligible consumers who requested free file disclosures in states that already mandate free file disclosures for consumers and those that do not. Based on information that the staff have obtained from the consumer reporting industry, the staff estimates that the increase in annual file disclosures requested due to the Act and proposed rule will be 231%.

[28] The Commission will request a clearance from OMB for the proposed collection of information for the three-year period from June 2004 through June 2007. During this period, the staff predict that nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies will receive 19.9 million new annual file disclosure requests per year. However, the nationwide and nationwide specialty consumer reporting agencies are not required to issue annual file disclosures under this rule until December 2004. The staff predict 9.45 million new requests for annual file disclosures for the first year of the clearance [19.9 million / 2]. Thus, the staff predict that consumer reporting agencies will receive an average of 16.6 million new requests per year during the requested clearance period. [(9.45 million + 19.9 million + 19.9 million) / 3 = 16.6 million].

[29] According to a HarrisInteractive poll, the percentage of households that have access to the internet is currently over 60% and increasing. *See* The Harris Poll #8, February 5, 2003, available at *http://www.harrisinteractive.com/harris_poll/index.asp?PID=356*. In addition, internet users are probably more likely to request an annual file disclosure. Accordingly, the staff estimate that annually 75% (or 22.8 million) of the 30.4 million new requests will be made by internet.

[30] Based on the time required for similar activity in the Federal government (including at the FTC), the staff estimate that such contracting and administration will require approximately 4 full-time equivalent employees (''FTE'') for the web service contract. Thus, the staff estimates that the setting up the contract will require 4 FTE, which is 8,320 hours per year (4FTE × 2080 hrs/yr). The cost is based on the reported Bureau of Labor Statistics rate for Computer System Manager ($46.96). Thus, the estimated setup and maintenance cost for an internet system is $390,707 per year. (8,320 hours × $46.96/hour).

[31] Similar to setup of the internet system, the staff estimates that recurrent contracting for automated telephone capacity will require approximately 3 FTE, and will therefore require 6,240 hours (3 × 2,080 hours). Applying a wage rate based on the BLS rate for Marketing Manager ($45.26/hr), the estimate for setup and maintenance cost is $282,422 (3 × 2080 × $45.26) per year.

[32] Based on their knowledge of the industry, the staff estimates that consumers will submit 24% (4.0 million) of the average 16.6 million new requests for annual file disclosures by telephone. Of those, an estimated 1% (or 40,000) will not have telephone equipment compatible with an automated system and may need to be serviced by live personnel.

instructions required by the proposed rule will require no additional time or cost because the disclosures will be made automatically when consumers select certain options. For the postal service mail requests, the nationwide and nationwide specialty consumer reporting agencies may send printed forms to those consumers who choose to use this method. Of the predicted 987,370 requests for annual file disclosures that will be done by mail, the staff estimates based on their knowledge of the industry that 10% (or 98,737) will request instructions by mail. If printed instructions are sent to each of these consumers by mail, requiring 10 minutes of clerical time per consumer, this will require 16,456 hours. [(98,737 instructions × 10 minutes) / 60 minutes per hour].

Labor Costs

Labor costs are derived by applying hourly cost figures to the burden hours described above. Accordingly, the staff estimates that it will cost $39,600 to provide annual file disclosures for requests that require a telephone service representative. [$12.00 per hour × 3,300 hours].[33] The remaining processing of requests for annual file disclosures and instructions will be performed by clerical personnel, which will require 181,100 hours as described above, and will cost $2,535,400. [(27,700 hours for handling initial mail request + 136,900 hours for handling requests redirected to mail + 16,500 hours for handling instructions mailed to consumers) × $14.00 per hour].[34] As explained earlier, it is estimated that a total of 14,560 labor hours will be needed to obtain, maintain, and adjust the new capacity requirements for the automated telephone call center and the internet web services. It is estimated that this will cost approximately $673,100 per year.[35]

In addition, the staff believes it is likely that the consumer reporting agencies will use third-party contractors (instead of their own employees) to increase the capacity of their systems. Because of the way these contracts are typically established, these costs will likely be incurred on a continuing basis, and will be calculated based on the number of requests handled by the systems. The staff estimates that the total annual amount to be paid for services delivered under these contracts is $5.16 million.[36] Thus, these costs are added to the labor costs, for a total of $8.41 million ($3.248 million + $5.16 million).[37]

The Commission invites comments that will enable it to: (1) 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; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collections of information on those who must comply, including through the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information technology.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed rule and a Final Regulatory Flexibility Analysis (''FRFA''), if any, with the final rule, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603–605.

The Commission does not anticipate that the proposed rule will have a significant economic impact on a substantial number of small entities. The proposed rule applies to two types of consumer reporting agencies: (1) Nationwide consumer reporting agencies, and (2) nationwide specialty consumer reporting agencies.[38] The Commission has not identified any nationwide consumer reporting agencies that are small entities. Furthermore, the Commission estimates, based on industry sources, that there are fewer than 50 nationwide specialty consumer reporting agencies currently doing business in the U.S. The Commission has been unable to determine how many of these nationwide specialty consumer reporting agencies, if any, are small entities. Based on industry sources, however, the Commission believes that the number of such agencies that are small entities, if any, is insubstantial. While the economic impact of the proposed rule on a particular small entity could be significant, overall the proposed rule will not have a significant economic impact on a substantial number of small entities. This document serves as notice to the Small Business Administration of the agency's certification of no effect. Nonetheless, the Commission has determined that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed rule on small entities. Therefore, the Commission has prepared the following analysis:

A. Description of the Reasons That Action by the Agency Is Being Considered

The Fair and Accurate Credit Transactions Act of 2003, Public Law 108–159, 117 Stat. 1952 (FACT Act or the Act), directs the Commission to adopt rules to require the establishment of: (1) A centralized source through which consumers may request a free annual file disclosure from each nationwide consumer reporting agency; (2) a standardized form for consumer use in making such requests; and (3) a streamlined process for consumers to request free annual file disclosures from nationwide specialty consumer reporting agencies. In this action, the

[33] The Bureau of Labor Statistics reports an average wage of $12.00 per hour for retail trade employees.

[34] The staff estimates the wage rate for these clerical personnel to be $14.00 per hour, which is between the Bureau of Labor Statistics rate for retail trade (at $12.00) and the rate for financial activities (at $17.37).

[35] As explained earlier, the estimated burden is 6,240 hours ($282,422) for automated phone service and 8,320 hours ($390,707) for web services.

[36] The staff estimates the total ongoing costs to be paid under these contracts is $5.16 million. The automated telephone cost is estimated as $4.73 million ($1.20 per request × 3.94 million requests) and the internet web service cost is estimated as $435,600 ($0.035 per request × 12.45 million requests).

[37] The consumer reporting industry is a multi-billion dollar market. As of 2002, it is estimated to have more than $4 billion dollars in sales of file disclosures. One study indicates that the nationwide consumer reporting agencies had approximately $1.2 billion in earnings in 2002. *See* Michael Turner, Daniel Balis, Joseph Duncan, and Robin Varghese, ''Free Consumer Credit Reports: At What Cost? The Economic Impact of a Free Credit Report Law to the National Credit Reporting Infrastructure,'' Washington, DC: Information Policy Institute, September, 2003. Thus, the total labor cost burden estimate of $8.41 million represents a small percentage—approximately 0.7% ($8.41 million divided by $1.2 billion) of the overall market. This comparison is conservative, as it does not include the earnings of the nationwide specialty consumer reporting agencies.

[38] In addition, this notice solicits information about two other types of consumer reporting agencies. As discussed in section F, *supra*, the FACT Act directs the Commission to determine whether to promulgate a rule covering ''a consumer reporting agency that compiles and maintains files on consumers on substantially a nationwide basis.'' The Commission, at this time, is not proposing a rule provision relevant to such an agency. However, the Commission is requesting information about the number, and nature of any such agencies and whether they should be subject to a requirement to provide annual file disclosures to consumers in the future. Furthermore, the Commission seeks information about associated consumer reporting agencies, *i.e.*, those consumer reporting agencies that maintain consumer files within the systems of nationwide consumer reporting agencies. The proposed rule, however, does not cover such agencies.

Commission proposes, and seeks comment on, a rule that would fulfill the statutory mandate. The Act requires that the Commission promulgate this rule not later than six months after the date of enactment, or by June 4, 2004.

B. Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of the proposed rule is to require the establishment of: (1) A centralized source through which consumers may request a free annual file disclosure from each nationwide consumer reporting agency; (2) a standardized form for consumer use in making such requests; and (3) a streamlined process for consumers to request free annual file disclosures from nationwide specialty consumer reporting agencies. The proposed rule is authorized by and based upon section 211(a) and (d) of the FACT Act, Public Law 108–159, 117 Stat. 1952.

C. Small Entities to Which the Proposed Rule Will Apply

The proposed rule will apply to two types of consumer reporting agencies: (1) Nationwide consumer reporting agencies, and (2) nationwide specialty consumer reporting agencies. The Commission has not identified any nationwide consumer reporting agencies that are small entities. The Commission estimates that the number of nationwide specialty consumer reporting agencies that are small entities (with less than $6,000,000 in average annual receipts) is either very small or none. However, the Commission invites comment and information on this issue.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

Under the proposed rule, nationwide specialty consumer reporting agencies [39] will be required to do the following: (1) Provide consumers with free annual file disclosures; (2) establish a streamlined process, including a toll-free telephone number, for accepting and processing such consumer requests; (3) provide consumers with clear instructions on how to obtain free annual file disclosures; and (4) make additional disclosures to consumers during situations when adverse circumstances or extraordinary request volume affect the ability of the agency to accept consumer requests.

[39] Nationwide consumer reporting agencies will have similar, but more extensive, obligations under the proposed rule. As stated above, however, the Commission believes that there are no nationwide consumer reporting agencies that are small entities.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed rule. The Commission invites comment and information on this issue.

F. Significant Alternatives to the Proposed Rule

The Commission is not, at this time, aware of what particular alternative methods of compliance may comport with the statute and also reduce the impact of the proposed rule on small entities that may be affected by the rule. Therefore, the Commission seeks comment and information with regard to (1) the existence of small business entities for which the proposed rule would have a significant economic impact; and (2) suggested alternative methods of compliance that, consistent with the statutory requirements, would reduce the economic impact of the rule on such small entities. (*See* section VII of this notice, *supra*, questions 4, and 18–22.) If the comments filed in response to this notice identify small entities that are significantly affected by the rule, as well as alternative methods of compliance that would reduce the economic impact of the rule on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final rule.

VII. Questions for Comment on the Proposed Rule

The Commission seeks comment on all aspects of the proposed rule. Without limiting the scope of issues on which it seeks comment, the Commission is particularly interested in receiving comments on the questions that follow. Responses to these questions should include detailed, factual supporting information whenever possible.

Definitions and Examples

1. Are the definitions contained in section 610.1(b) of the proposed rule clear, meaningful, and appropriate?

2. Do the examples provided in various sections of the proposed rule offer helpful guidance for complying with the rule? What additional examples might be helpful if included?

Centralized Source for Nationwide Consumer Reporting Agencies

3. Are the proposed requirements for establishment and operation of the centralized source, set forth in section 610.2(b), appropriate and adequate to fulfill the purpose of enabling consumers to request easily their free annual file disclosures from all nationwide consumer reporting agencies? Are there other issues or problems with respect to establishment and operation of the centralized source that the rule should address? If so, please identify and discuss how the rule could address the issue or problem.

4. Is the proposed rule's requirement that if nationwide consumer reporting agencies have the ability to sell a consumer report to a third party they must provide an annual file disclosure to that consumer through the centralized source appropriate?

(a) Should the rule specifically address the relationship between nationwide consumer reporting agencies and associated consumer reporting agencies, *i.e.*, those consumer reporting agencies that maintain consumer files within the systems of nationwide consumer reporting agencies? If so, how should the rule address this relationship?

(b) Is the definition of associated consumer reporting agency contained in section 610.1(b)(2) clear and adequate? To what other entities, besides those described under section II, above, might this definition apply?

(c) What will be the effect of the rule on the contractual relationships that exist between nationwide consumer reporting agencies and their associated consumer reporting agencies? How could the rule address these effects?

(d) What is the number and nature of associated consumer reporting agencies currently doing business in the U.S.? What is the scope of their operations? How many consumer reports are sold annually through these entities? Are any of these entities small businesses (*i.e.*, those with less than $6,000,000 in average annual receipts)? If so, how many? What will be the economic impact of the proposed rule on these small entities? Could the proposed rule be modified, consistent with the requirements of the FACT Act, in a way that would lessen the economic impact of the rule on such entities? If yes, please describe.

5. Section 610.2 (b)(2)(ii) allows the nationwide consumer reporting agencies to collect, through the centralized source, only as much information as is reasonably necessary to properly identify the consumer as required under the Fair Credit Reporting Act, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations, and to process the transaction(s) requested by the consumer.

(a) Does the amount of information that is reasonably necessary depend on the request method or the method of delivery of the file disclosure or product

or service? What information is reasonably necessary for each request method and delivery method?

(b) What types of personally identifiable information do nationwide consumer reporting agencies currently collect in providing file disclosures to consumers? Do these practices differ from information collection practices related to the collection of personally identifiable information in providing other products (*i.e.*, those not mandated by statute), and if so, how?

(c) How is the personally identifiable information collected in providing file disclosures used and disclosed by the nationwide consumer reporting agencies, affiliated entities and third parties? For what other purposes might this information be used and disclosed? What are the potential benefits and consequences of such use and disclosure?

(d) Should the rule address the use of information collected by the centralized source (*i.e.*, by allowing, prohibiting, restricting, or limiting such use)? If so, how? If so, what information should such a rule address, *i.e.*, personally identifiable information collected in connection with file disclosures and/or information collected in connection with products provided through the centralized source? Should any restrictions or limitations differ from those that are applicable to the same information collected currently in connection with the provision of such disclosures and products? On what basis should a distinction between information collected through the centralized source and information currently collected by nationwide consumer reporting agencies be made?

(e) Are there compelling reasons why nationwide consumer reporting agencies should not be allowed to use separate identification procedures in the centralized source?

6. Section 610.2(c) of the proposed rule requires that nationwide consumer reporting agencies reasonably anticipate the volume of consumer requests to the centralized source and develop contingency plans to minimize the impact of adverse circumstances that may affect the operation of the centralized source.

(a) Is the list of possible adverse circumstances sufficiently inclusive? If there are additional circumstances that should be included in this provision, please identify them and describe their potential impact on the operation of the centralized source.

(b) Is the list of measures to be included in the contingency plans sufficiently inclusive? If there are additional measures that should be included in this provision, please describe them.

7. Should the proposed rule provide relief for nationwide consumer reporting agencies during times of extraordinary request volume? If yes, does section 610.2(e) of the proposed rule adequately address those potential situations? If not, what additional provisions are needed and why?

8. Section 610.2(g) of the proposed rule governs the possible use of the centralized source for other communications, including marketing or advertising.

(a) Are the provisions of this section, along with the prohibitions of the FTC Act, adequate to ensure that consumers are protected against communications that may interfere with the purpose of the centralized source?

(b) Are there particular goods or services the marketing or advertising of which would be especially likely to interfere with or complement the purpose of the centralized source; for example, credit scores, credit monitoring, and credit counseling? If so, why? Should the marketing or advertising of such products or services be treated differently under the rule?

9. How could the rule address the potential for fraudulent Web sites, telephone numbers and other ploys that may mimic the centralized source in order to gain access to consumer personally identifiable information or for other illegal means? Should the rule require the nationwide consumer reporting agencies to undertake specific measures to prevent such illegal schemes? If yes, specify what measures would be appropriate and effective. Should the rule require the nationwide consumer reporting agencies to employ measures to reassure consumers that they are contacting the legitimate centralized source? If yes, specify what measure would be appropriate and effective.

10. What competitive concerns may be raised by the operation of the centralized source and/or other provisions of the proposed rule? How might the final rule address these concerns?

11. Is the geographic roll-out scheme for the centralized source during the transition period, described in section 610.2(i)(1) of the proposed rule, appropriate to protect the interests of both industry and consumers and to ensure an orderly phase-in of the free annual file disclosures requirement?

(a) Is the duration of the roll-out appropriate? Please provide any available information regarding the costs or benefits of different rollout durations.

(b) Does section 610.2(i) adequately address the potential problem of extraordinary request volume during the initial transition period?

(c) Discuss any additional issues that should be addressed with regard to the transition period.

Streamlined Process for Nationwide Specialty Consumer Reporting Agencies

12. Are the proposed requirements for a streamlined process for consumers to request free annual file disclosures from nationwide specialty consumer reporting agencies, as set forth in section 610.3(a), appropriate and adequate? Are there other issues or problems with respect to the streamlined process that this provision should address? If so, please identify and discuss how the rule could address the issue or problem.

13. Section 610.3(b) of the proposed rule requires that nationwide specialty consumer reporting agencies reasonably anticipate the volume of consumer requests for annual file disclosures and develop contingency plans to minimize the impact of adverse circumstances that may affect the operation of the streamlined process. Is the list of measures to be included in the contingency plans sufficiently inclusive? If there are additional measures that should be included in this provision, please describe them.

14. Does section 610.3(c) of the proposed rule adequately address the potential situation of extraordinary request volume for nationwide specialty consumer reporting agencies? If not, what additional provisions are needed and why?

15. Does section 610.3(g) adequately address the potential problem of extraordinary request volume during the transition period for the streamlined process? Discuss any additional issues that should be addressed with regard to the transition period.

Standardized Form

16. Section 690.1, Appendix D, sets out a model standardized form that can be used for mail or Internet requests to the centralized source. Is the form adequate and appropriate for this purpose? Does the form list the minimum information necessary to properly identify the consumer and process the request? If additional information is needed, identify such information and state why it is needed. Does the form include more personal information than is reasonably necessary to properly identify the consumer?

Substantially Nationwide Consumer Reporting Agencies

17. Are there consumer reporting agencies in the U.S. that compile and maintain files on consumers on substantially a nationwide basis, other than those consumer reporting agencies which, pursuant to the proposed rule, will provide free annual file disclosures through the centralized source? If so:

(a) Identify each such agency and state:

(i) the approximate number or portion of the adult population served by the agency and the number of states included in the agency's geographic coverage;

(ii) the number of requests for file disclosures to the agency and the number of consumer reports generated by the agency;

(iii) the categories of information contained in any consumer reports generated by the agency; and

(iv) the needs of consumers for access to file disclosures generated by the agency.

(b) What would be the advantages and disadvantages of a requirement that consumers be able to obtain annual file disclosures generated by such agencies free of charge? What would be the costs of such a requirement?

(c) What would be the advantages and disadvantages of requiring that such agencies provide annual file disclosures through the centralized source?

(d) What would be the effect on the ongoing competitive viability of such agencies if they were required to provide annual file disclosures to consumers free of charge?

Regulatory Flexibility Act Analysis

18. Are there any small business entities (*i.e.*, those with less than $6,000,000 in average annual receipts) covered by the proposed rule?

a. Identify the number and nature of any such business entities.

b. Describe, with specificity, the likely economic impact of the proposed rule on any such small business entities.

19. Please provide comment on any or all of the provisions in the proposed rule with regard to (a) the impact of the provision(s) (including any benefits and costs), if any, and (b) what alternatives, if any, the Commission should consider, as well as the costs and benefits of those alternatives, paying specific attention to the effect of the proposed rule on small entities in light of the analysis in section VI of this notice. Costs to ''implement and comply'' with the proposed rule should include expenditures of time and money for any employee training, attorney, computer programmer or other professional time.

20. Please describe ways in which the proposed rule could be modified, consistent with the FACT Act's mandated requirements, to reduce any costs or burdens for small entities.

21. Please provide any information quantifying the economic costs and benefits of the proposed rule for regulated entities, including small entities.

22. Please identify any relevant federal, state, or local rules that may duplicate, overlap or conflict with the proposed rule.

List of Subjects

16 CFR Part 610

Fair Credit Reporting Act, Consumer reports, Consumer reporting agencies, Credit, Trade practices.

16 CFR Part 698

Fair Credit Reporting Act, Consumer reports, Consumer reporting agencies, Credit, Trade practices.

Accordingly, for the reasons set forth in the preamble, the FTC proposes to amend chapter I, title 16, Code of Federal Regulations, as follows:

1. Revise the heading of subchapter F of this chapter to read as follows:

SUBCHAPTER F—FAIR CREDIT REPORTING ACT

2. Add new part 610 to subchapter F to read as follows:

PART 610—FREE ANNUAL FILE DISCLOSURES

Sec.
610.1 Definitions and rule of construction.
610.2 Centralized source for requesting annual file disclosures from nationwide consumer reporting agencies.
610.3 Streamlined process for requesting annual file disclosures from nationwide specialty consumer reporting agencies.

Authority: 15 U.S.C. 1681a, g, and h; sec. 211 (a) and (d), Pub. L. 108–159, 117 Stat. 1968 and 1972 (15 U.S.C. 1681j).

§ 610.1 Definitions and rule of construction.

(a) The definitions and rule of construction set forth in this section apply throughout this part.

(b) *Definitions.*

(1) *Annual file disclosure* means a file disclosure that is provided to a consumer, upon consumer request and without charge, once in any 12-month period, in compliance with section 612(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681j(a).

(2) *Associated consumer reporting agency* means a consumer reporting agency that maintains consumer files within systems operated by one or more nationwide consumer reporting agencies.

(3) *Consumer* means an individual.

(4) *Consumer report* has the meaning provided in section 603(d) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(d).

(5) *Consumer reporting agency* has the meaning provided in section 603(f) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(f).

(6) *Extraordinary request volume*, except as provided in § 610.2(i)(2) of this part, occurs when the number of consumers requesting file disclosures during any 24-hour period is more than twice the daily rolling 90-day average of consumers requesting file disclosures. For example, if over the previous 90 days an average of 100 consumers per day requested file disclosures, then an extraordinary request volume would be any volume greater than two times 100, or 201 requests in a single 24-hour period.

(7) *File disclosure* means a disclosure by a consumer reporting agency pursuant to section 609 of the Fair Credit Reporting Act, 15 U.S.C. 1681g.

(8) *Nationwide consumer reporting agency* means a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis as defined in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p).

(9) *Nationwide specialty consumer reporting agency* has the meaning provided in section 603(w) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(w).

(10) *Request method* means the method by which a consumer chooses to communicate a request for an annual file disclosure.

(c) *Rule of construction.* The examples in this part are illustrative and not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

§ 610.2 Centralized source for requesting annual file disclosures from nationwide consumer reporting agencies.

(a) *Purpose.* The purpose of the centralized source is to enable consumers to make a single request to obtain annual file disclosures from all nationwide consumer reporting agencies, as required under section 612(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681j(a).

(b) *Establishment and operation.* All nationwide consumer reporting agencies shall jointly design, fund, implement, maintain, and operate a centralized source for the purpose described in paragraph (a) of this section. The centralized source required by this part shall:

(1) Enable consumers to request annual file disclosures by any of the

following request methods, at the consumer's option:

(i) A single, dedicated Internet Web site;

(ii) A single, dedicated toll-free telephone number; and

(iii) Mail directed to a single address;

(2) Be designed, funded, implemented, maintained, and operated in a manner that:

(i) Has adequate capacity to accept requests from the reasonably anticipated volume of consumers contacting the centralized source through each request method, as determined in accordance with paragraph (c) of this section;

(ii) Collects only as much information as is reasonably necessary to properly identify the consumer as required under the Fair Credit Reporting Act, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations, and to process the transaction(s) requested by the consumer;

(iii) Provides information through the centralized source Web site and telephone number regarding how to make a request by all request methods required under section 610.2(b)(1) of this part; and

(iv) Provides clear and easily understandable information and instructions to consumers, including, but not necessarily limited to:

(A) Providing information on the progress of the consumer's request while the consumer is engaged in the process of requesting a file disclosure;

(B) For a Web site request method, providing access to a ''help'' or ''frequently asked questions'' screen, which includes specific information that consumers might reasonably need to order their file disclosure, the answers to questions that consumers might reasonably ask, and instructions whereby a consumer may file a complaint with the centralized source and with the Federal Trade Commission; and

(C) In the event that a consumer requesting a file disclosure through the centralized source cannot be properly identified in accordance with the Fair Credit Reporting Act, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations, providing:

(*1*) A statement that the consumer's identity cannot be verified; and

(*2*) Directions on how to complete the request, including what additional information or documentation will be required to complete the request, and how to submit such information; and

(3) Make available to consumers a standardized form established jointly by the nationwide consumer reporting agencies, which consumers may use to make a request for an annual file disclosure, either by mail or on the Internet Web site required under § 610.2(b)(1) of this part, from the centralized source required by this part. The form provided at 16 CFR 690, Appendix D, may be used to comply with this section.

(c) *Requirement to anticipate.* The nationwide consumer reporting agencies shall implement reasonable procedures to anticipate, and to respond to, the volume of consumers who will contact the centralized source through each request method, to request, or attempt to request, a file disclosure, including developing and implementing contingency plans to address circumstances that may materially and adversely impact the operation of the nationwide consumer reporting agency, a centralized source request method, or the centralized source.

(1) Circumstances that may materially and adversely impact operations shall include, but are not necessarily limited to, natural disasters, telecommunications interruptions, equipment malfunctions, labor shortages, computer viruses, coordinated hacker attacks, and seasonal and other fluctuations in the volume of consumer requests for annual disclosures.

(2) The contingency plans required by this section shall include measures to minimize the impact of the circumstances referred to in paragraph (c)(1) of this section on the operation of the centralized source and on consumers contacting, or attempting to contact, the centralized source.

(i) Such measures to minimize impact shall include, but are not necessarily limited to:

(A) To the extent possible, providing information to consumers on how to use another available request method;

(B) To the extent possible, communicating, to a consumer who attempts but is unable to make a request, the fact that a condition exists that has precluded the centralized source from accepting all requests, and the period of time after which the centralized source is reasonably anticipated to be able to accept the consumer's request for an annual file disclosure; and

(C) Taking all reasonable steps to restore the centralized source to normal operating status as quickly as possible.

(ii) Measures to minimize impact may also include, as appropriate, collecting request information but declining to accept the request for processing until a reasonable later time, provided that the consumer is clearly and prominently informed, to the extent possible, of when the request will be accepted for processing.

(d) *Disclosures required.* If a nationwide consumer reporting agency has the ability to provide a consumer report to a third party relating to a consumer, that agency shall provide an annual file disclosure to such consumer if the consumer makes a request through the centralized source.

(e) *Extraordinary request volume.* Provided that the nationwide consumer reporting agency has complied with paragraph (c) of this section, a nationwide consumer reporting agency shall not be deemed in violation of paragraph (b)(2)(i) of this section, for any period of time during which:

(1) A particular centralized source request method experiences extraordinary request volume;

(2) The centralized source, through all request methods, experiences extraordinary request volume; or

(3) The nationwide consumer reporting agency experiences extraordinary request volume.

(f) *Security.* A nationwide consumer reporting agency shall comply with Standards for Safeguarding Customer Information, 16 CFR 314.3 and 314.4, for all personally identifiable information collected or disclosed by the nationwide consumer reporting agency or the centralized source, as a result of a transaction conducted, or request for annual file disclosure made, through the centralized source.

(g) *Communications provided by centralized source.*

(1) Any communications or instructions, including any advertising or marketing, provided through the centralized source shall not interfere with, detract from, contradict, or otherwise undermine the purpose of the centralized source stated in paragraph (a).

(2) Examples of interfering, detracting, inconsistent, and/or undermining communications include:

(i) A Web site that contains pop-up advertisements that hinder the consumer's ability to complete an online request for an annual file disclosure;

(ii) Centralized source materials that represent, expressly or by implication, that a consumer must purchase a paid product in order to receive or to understand the annual file disclosure;

(iii) Centralized source materials that represent, expressly or by implication, that annual file disclosures are not free, or that obtaining an annual file disclosure will have a negative impact on the consumer's credit standing; and

(iv) Centralized source materials that falsely represent, expressly or by

implication, that a product or service offered ancillary to receipt of a file disclosure, such as a credit score or credit monitoring service, is free, or failing to clearly and prominently disclose that consumers must cancel a service advertised as free to avoid being charged, if such is the case.

(h) *Effective date.* Section 610.2 shall become effective on December 1, 2004.

(i) *Transition.*

(1) *Regional roll-out.* The centralized source required by this part shall be made available to consumers in a cumulative manner, as follows:

(i) For consumers residing in Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming, the centralized source shall become available on or before December 1, 2004;

(ii) For consumers residing in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin, the centralized source shall become available on or before March 1, 2005;

(iii) For consumers residing in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Oklahoma, South Carolina, Tennessee, and Texas, the centralized source shall become available on or before June 1, 2005; and

(iv) For all other consumers, including consumers residing in Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and all United States territories and possessions, the centralized source shall become available on or before September 1, 2005.

(2) *Extraordinary request volume during transition.*

(i) *During the period of December 1, 2004 through December 7, 2004*, extraordinary request volume shall mean the following:

(A) For an individual request method: Extraordinary request volume occurs when the number of consumers contacting or attempting to contact the centralized source through the request method in a 24-hour period is more than twice the daily total number of consumers that were reasonably anticipated to contact the centralized source, in compliance with paragraph (c) of this section, through that request method.

(B) For the centralized source as a whole: Extraordinary request volume occurs when the number of consumers contacting or attempting to contact the centralized source in a 24-hour period is more than twice the average daily total number of consumers that were reasonably anticipated to contact the centralized source, in compliance with paragraph (c) of this section, through any request method.

(C) For a nationwide consumer reporting agency: Extraordinary request volume occurs when the number of consumers contacting or attempting to contact the nationwide consumer reporting agency to request file disclosures in a 24-hour period is more than twice the average daily total number of consumers that were reasonably anticipated to contact that nationwide consumer reporting agency to request their file disclosures, in compliance with paragraph (c) of this part.

(ii) *During the period of December 8, 2004 through August 31, 2005*, extraordinary request volume shall mean the following:

(A) For an individual request method: Extraordinary request volume occurs when the number of consumers contacting or attempting to contact the centralized source through the request method in a 24-hour period is more than twice the rolling 7-day daily average number of consumers who contacted or attempted to contact the centralized source to request file disclosures through that request method;

(B) For the centralized source as a whole: Extraordinary request volume occurs when the number of consumers contacting or attempting to contact the centralized source in a 24-hour period is more than twice the rolling 7-day daily average number of consumers who contacted or attempted to contact the centralized source to request file disclosures through any request method; and

(C) For a nationwide consumer reporting agency: Extraordinary request volume occurs when the number of consumers contacting or attempting to contact the nationwide consumer reporting agency to request file disclosures in a 24-hour period is more than twice the rolling 7-day daily average of consumers who requested any type of file disclosure from that nationwide consumer reporting agency.

(3) *Option to defer requests during transition in times of high volume.*

(i) For purposes of this paragraph, high request volume shall mean the following:

(A) For an individual request method: High request volume occurs when the number of consumers contacting or attempting to contact the centralized source through the request method in a 24-hour period is more than 115% of the rolling 7-day daily average number of consumers who contacted or attempted to contact the centralized source to request their file disclosures through that request method;

(B) For the centralized source as a whole: High request volume occurs when the number of consumers contacting or attempting to contact the centralized source in a 24-hour period is more than 115% of the rolling 7-day daily average number of consumers who contacted or attempted to contact the centralized source to request their file disclosures through any request method; and

(C) For a nationwide consumer reporting agency: High request volume occurs when the number of consumers contacting or attempting to contact the nationwide consumer reporting agency to request file disclosures in a 24-hour period is more than 115% of the rolling 7-day daily average of consumers who requested any type of file disclosure from that nationwide consumer reporting agency.

(ii) *During the period from December 8, 2004 through August 31, 2005*, a nationwide consumer reporting agency shall not be deemed in violation of paragraph (b)(2)(i) of this section for a period of time in which a centralized source request method, the centralized source, or the nationwide consumer reporting agency experiences high request volume, provided that the nationwide consumer reporting agency.

(A) complies with paragraph (c) of this section; and

(B) collects all consumer request information and delays accepting the request for processing until a reasonable later time; and

(C) clearly and prominently informs the consumer of when the request will be accepted for processing.

§ 610.3 Streamlined process for requesting annual file disclosures from nationwide specialty consumer reporting agencies.

(a) *Streamlined process requirements.* Any nationwide specialty consumer reporting agency shall have a streamlined process for accepting and processing consumer requests for annual file disclosures. The streamlined process required by this part shall:

(1) Enable consumers to request annual file disclosures by a toll-free telephone number that:

(i) Provides clear and prominent instructions for requesting disclosures by mail and by any additional available request methods;

(ii) Is published, in conjunction with all other published numbers for the

nationwide specialty consumer reporting agency, in any telephone directory in which any telephone number for the nationwide specialty consumer reporting agency is published; and

(iii) Is clearly and prominently posted on any Web site owned or maintained by the nationwide specialty consumer reporting agency, along with instructions for requesting disclosures by mail and by any additional available request methods; and

(2) Be designed, funded, implemented, maintained, and operated in a manner that:

(i) Has adequate capacity to accept requests from the reasonably anticipated volume of consumers contacting the nationwide specialty consumer reporting agency to request annual file disclosures, as determined in compliance with paragraph (b) of this section;

(ii) Collects only as much personal information as is reasonably necessary to properly identify the consumer as required under the Fair Credit Reporting Act, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations; and

(iii) Provides clear and easily understandable information and instructions to consumers, including but not necessarily limited to:

(A) Providing information on the status of the consumer's request while the consumer is in the process of making a request;

(B) For a Web site request method, providing access to a ''help'' or ''frequently asked questions'' screen, which includes more specific information that consumers might reasonably need to order their file disclosure, the answers to questions that consumers might reasonably ask, and instructions whereby a consumer may file a complaint with the nationwide specialty consumer reporting agency and with the Federal Trade Commission; and

(C) In the event that a consumer requesting a file disclosure cannot be properly identified in accordance with the Fair Credit Reporting Act, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations, providing:

(*1*) A statement that the consumer's identity cannot be verified; and

(*2*) Directions on how to complete the request, including what additional information or documentation will be required to complete the request, and how to submit such information.

(b) *Requirement to anticipate.* A nationwide specialty consumer reporting agency shall implement reasonable procedures to anticipate, and respond to, the volume of consumers who will request, or attempt to request, a file disclosure, including developing and implementing contingency plans to address circumstances that may materially and adversely impact the operation of the nationwide specialty consumer reporting agency, a request method, or the streamlined process.

(1) Circumstances that may materially and adversely impact operations shall include, but are not limited to, natural disasters, telecommunications interruptions, equipment malfunctions, labor shortages, computer viruses, coordinated hacker attacks, and seasonal and other fluctuations in the volume of consumer requests for annual disclosures.

(2) The contingency plans required under this section shall include measures to minimize the impact of the circumstance referred to in paragraph (b)(1) of this section on the operation of the streamlined process and on consumers contacting, or attempting to contact, the nationwide specialty consumer reporting agency to request an annual file disclosure.

(i) Such measures to minimize impact shall include, but are not necessarily limited to:

(A) To the extent possible, providing information to consumers on how to use another available request method;

(B) To the extent possible, communicating, to a consumer who attempts but is unable to make a request, the fact that a condition exists that has precluded the nationwide specialty consumer reporting agency from accepting all requests, and the period of time after which the agency is reasonably anticipated to be able to accept the consumer's request for an annual file disclosure; and

(C) Taking all reasonable steps to restore the streamlined process to normal operating status as quickly as possible.

(ii) Measures to minimize impact may also include, as appropriate, collecting request information but declining to accept the request for processing until a reasonable later time, provided that the consumer is clearly and prominently informed, to the extent possible, of when the request will be accepted for processing.

(c) *Extraordinary request volume.* Provided that the nationwide specialty consumer reporting agency has complied with paragraph (b) of this section, a nationwide specialty consumer reporting agency shall not be deemed in violation of paragraph (a)(2)(i) of this section for any period of time during which:

(1) A particular request method experiences extraordinary request volume; or

(2) The nationwide specialty consumer reporting agency experiences extraordinary request volume.

(d) *Security.* A nationwide specialty consumer reporting agency shall comply with Standards for Safeguarding Customer Information, 16 CFR 314.3 and 314.4, for all personally identifiable information collected or disclosed by the nationwide specialty consumer reporting agency as a result of a request for annual file disclosure.

(e) *Requirement to accept or redirect requests.* If a consumer requests an annual file disclosure through a method other than the streamlined process established by the nationwide specialty consumer reporting agency in compliance with this part, a nationwide specialty consumer reporting agency shall:

(1) Accept the consumer's request; or

(2) Instruct the consumer how to make the request using the streamlined process required by this part.

(f) *Effective date.* Section 610.3 shall become effective on December 1, 2004.

(g) *Extraordinary request volume during initial transition.* During the period of December 1, 2004 through February 28, 2005, extraordinary request volume shall mean the following:

(1) For an individual request method: Extraordinary request volume occurs when the number of consumers contacting or attempting to contact the nationwide specialty consumer reporting agency through a streamlined process request method in a 24-hour period is more than twice the daily total number of consumers who were reasonably predicted to contact that request method, in compliance with paragraph (b) of this section.

(2) For a nationwide specialty consumer reporting agency: Extraordinary request volume occurs when the number of consumers contacting or attempting to contact the nationwide specialty consumer reporting agency to request file disclosures in a 24-hour period is more than twice the number of consumers who were reasonably anticipated to contact the nationwide specialty consumer reporting agency to request their file disclosures, in compliance with paragraph (b) of this section.

3. Add new part 698 to subchapter F to read as follows:

PART 698—SUMMARIES, NOTICES, AND FORMS:

Sec.

698.1 Authority and purpose.

698.2 Legal effect.
Appendixes A–C to Part 698 [Reserved]
Appendix D to Part 698—Standardized Form for Requesting Free File Disclosure

Authority: Secs. 151, 153, 211(c) and (d), 213, and 311, Pub. L. 108–159, 117 Stat. 1961, 1966, 1970 and 1972 (15 U.S.C. 1681g and s).

§ 698.1 Authority and purpose.

(a) *Authority.* This part is issued by the Commission pursuant to the provisions of the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), as most recently amended by the Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108–159, 117 Stat. 1952 (Dec. 4, 2003).

(b) *Purpose.* The purpose of this part is to comply with sections 607(d), 609(c), and 612(a) of the Fair Credit Reporting Act, as amended, and section 211 of the Fair and Accurate Credit Transactions Act of 2003.

§ 698.2 Legal effect

These summaries, forms and notices prescribed by the FTC do not constitute a trade regulation rule. They carry out the directives in the statute that the FTC prescribe these documents, which will constitute compliance with the part of any section of the FCRA requiring that such summaries, notices, or forms be used by or supplied to any person.

Appendixes A–C to Part 698 [Reserved]

Appendix D to Part 698—Standardized form for requesting annual file disclosures.

REQUEST FOR FREE CREDIT REPORT

Note to Consumers: You have the right to get a free copy of your credit report, once every 12 months, from each of the nationwide consumer reporting agencies. Your report may contain information on where you work and live, the credit accounts that have been opened in your name, if you've paid your bills on time, and whether you have been sued, arrested, or have filed for bankruptcy. Businesses use this information in making decisions about whether to offer you credit, insurance, or employment, and on what terms.

Use this form to request your credit report from any, or all, of the nationwide consumer reporting agencies.

The following information is required to process your request:

Your Full Name: _____

Your Street Address: _____

Your City, State & Zip Code: _____

Your Telephone Numbers (with area code):

Day: _____

Evening: _____

Your Social Security number: _____

Your Date of Birth _____

Place a check next to each credit report you want.

_____ I want a credit report from each of the nationwide consumer reporting agencies

OR

_____ I want a credit report from:

_____ [name of nationwide consumer reporting agency]

_____ [name of nationwide consumer reporting agency]

_____ [name of nationwide consumer reporting agency]

Please check how you would like to receive your report. (Note: because of the need to accurately identify you before we send you your credit report, we may not be able to offer every delivery method to every consumer. We will try to honor your preference.)

_____ [available delivery method]

_____ [available delivery method]

_____ [available delivery method]

_____ Check here if, for security purposes, you want your copy of your credit report to include only the last four digits of your Social Security number (SSN), rather than your entire SSN.

If we need additional information to process your request, we may contact you by mail at the address you have provided. If you prefer that we contact you by phone or e-mail, please indicate:

☐ Telephone:

_____ Day or _____ Evening

☐ E-mail at: _____

For more information on obtaining your free credit report, visit [insert appropriate Web site address], call [insert appropriate telephone number], or write to [insert appropriate address].

Mail this form to:

[insert appropriate address]

You can expect to receive your report within 15 days after we receive your request.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–6268 Filed 3–18–04; 10:58 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "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*.

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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)

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